

**EFFECTIVE POLITICAL PARTICIPATION  
OF THE SMALL(ER) ETHNIC  
COMMUNITIES IN LOCAL SELF-GOVERNMENT  
IN THE REPUBLIC OF MACEDONIA**

*The Impact of the  
Ohrid Framework Agreement*



Centre for Regional Policy Research and Cooperation “Studiorum”

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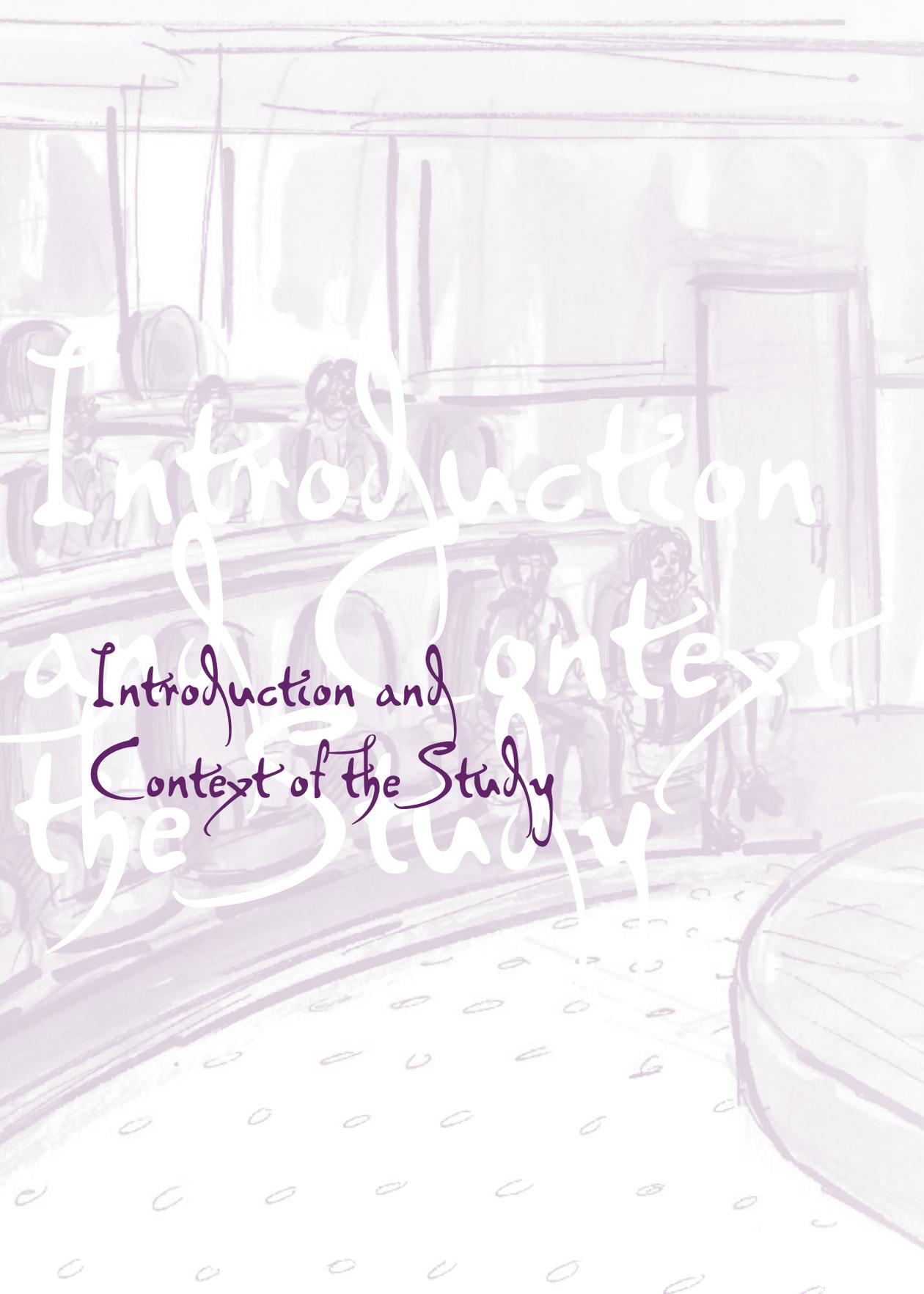
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# Abbreviations

<b>Constitutional amendments</b>	Constitutional amendments of the Constitution of the Republic of Macedonia since 1991
<b>ARRC</b>	Agency for Realization of the Rights of the Communities
<b>UN Declaration on Minorities</b>	Declaration on the Rights of Persons Belonging to National, Ethnic, Religious or Linguistic Minorities
<b>Durban declaration</b>	Durban Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance
<b>EC</b>	European Commission
<b>ECRI</b>	European Commission against Racism and Intolerance
<b>ECHR</b>	Convention for the Protection of Human Rights and Fundamental Freedoms
<b>ULSG</b>	Units of Local Self-Government
<b>ECHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b>ZELS</b>	Association of the Units of Local Self-Government
<b>LLSG</b>	Law on Local Self-Government
<b>CSCE</b>	Conference on Security and Cooperation in Europe
<b>CRC</b>	Inter-Community Relations Committee
<b>CIER</b>	Commissions for Inter-Ethnic Relations
<b>HRC</b>	United Nations Human Rights Committee
<b>LoN</b>	League of Nations

<b>MOI</b>	Ministry of Internal Affairs of the Republic of Macedonia
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ECOSOC</b>	International Covenant on Economic, Social and Cultural Rights
<b>Lund recommendations</b>	Lund Recommendations on the Effective Participation of National Minorities in Public Life
<b>Ombudsperson</b>	Ombudsperson of the Republic of Macedonia
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>UN</b>	United Nations
<b>OFA</b>	Ohrid Framework Agreement
<b>UN Charter</b>	Charter of the United Nations
<b>FCNM</b>	Framework Convention for the Protection of National Minorities
<b>Macedonia or RM</b>	Republic of Macedonia
<b>CoE</b>	Council of Europe
<b>SIOFA</b>	Secretariat for the Implementation of the Ohrid Framework Agreement
<b>UNHRC</b>	United Nations Human Rights Council
<b>UDHR</b>	Universal Declaration of Human Rights
<b>Constitution</b>	Constitution of the Republic of Macedonia, 1991 (including amendments)



# Introduction and Context of the Study

Introduction and Context of the Study

## A. Introduction

*The legal and political context* in Macedonia before and after the signing of the Ohrid Framework Agreement (OFA), the nature of the agreement itself, and its influence on the ethnic relations in Macedonia have been the focus of many academic and expert studies. Following the ethnic conflict in 2001, OFA was signed by representatives of the four biggest political parties and the president of the state, and it reflected the aspirations of ethnic Albanians for greater inclusion in decision-making and public life. In turn, its signing excluded the representatives of the small(er) communities.<sup>1</sup>

The provisions of the OFA are being implemented through the 1991 Constitution and the national laws, i.e. through the constitutional and legal amendments deriving from the agreement's adoption. Besides the fundamental principles, OFA envisages reforms in the areas of decentralization, non-discrimination and proportional representation, special parliamentary procedures, education, the use of languages, and the expression of identity.<sup>2</sup> It also introduces special rights for (ethnic and linguistic) minorities provided that the group exceeds 20% of the population, either on the state or on the municipal level. The exercise of rights of those (ethnic and linguistic) minorities that constitute less than 20% of the population on different levels of governance, called "small(er) ethnic communities" within the legal framework of the country, are regulated through special provisions.

Several international reports note that, during the implementation of the OFA, the existing principles related to the protection of minorities and their rights need to be respected, including the involvement of minorities in the decision-making processes on issues directly affecting them. At the same time, they point out that more attention should be given to the so called small(er) ethnic communities. The Advisory Committee on the Framework Convention for the Protection of National Minorities

1 OFA was signed by the president of Republic of Macedonia at that time, Boris Trajkovski, and by the leaders of the four, at that time, biggest political parties: The Internal Macedonian Revolutionary Organization - Democratic Party of Macedonian National Unity (Ljubcho Georgievski), Social-Democratic Union of Macedonia (Branko Crvenkovski), Party for Democratic Prosperity (Imer Imeri) and Democratic Party of the Albanians (Arben Dzaferi).

2 The Framework Agreement, Ohrid, 13 August 2001 (Macedonian language translation). *Webpage of the Secretariat for the Implementation of the Ohrid Framework Agreement*. [Охридски рамковен договор (превод на македонски јазик). Веблокација на Секретаријатот за сироведување на рамковниот договор]. <[http://siofa.gov.mk/mk/dokumente/Ramkoven\\_dogovor.pdf](http://siofa.gov.mk/mk/dokumente/Ramkoven_dogovor.pdf)>. Last accessed 07 September 2011.

(FCNM) draws attention to the differences between the Albanian community on one hand, which assumes a prominent position in the public life and plays an important role in the decision-making processes, and the small(er) communities on the other hand, who have limited access to the decision-making process. This creates a feeling of exclusion both from public life and from the process of implementation of the OFA. In addition, the Committee underlines that the implementation of the OFA should not lead to limitations of rights of the small(er) ethnic groups, thus making recommendations not only for the need for their involvement in the intercultural dialogue and the application of the principle of proportional representation, but also for a fair distribution of resources, access to media, the right to education in minority languages, and representation in the legal bodies and courts. Overall, the recommendations suggest that the government needs to increase its efforts in order to ensure equitable representation of the small(er) ethnic communities in the public sphere and specifically within public administration.<sup>3</sup> The Advisory Committee recommends special measures to be taken in order to fight social exclusion and marginalization of the Roma community, so to ensure public participation.<sup>4</sup>

The reports of the European Commission (EC) on the progress of Macedonia in the process of integration into the European Union (EU) point to similar problems. The 2010 report notes that “the representation of the small(er) communities, particularly the Turkish and Roma community remains low in the public service,” a fact that is emphasized in the previous EC reports as well.<sup>5</sup>

The findings of the analyses, reports and literature, as well as the tenth anniversary of the signing of the OFA, urge the academic and professional community to review the influence of the OFA on the position of the small(er) ethnic communities. Thus, in light of the fact that political participation (elaborated through several categories) and decentralization (explicit) form a part of the priority areas of the OFA, this study analyzes the influence of the OFA on the effective political participation of the small(er) ethnic communities in local self-government in Macedonia. Self-governance encompasses minorities’ entitlement to political participation in the decision-making process on issues directly affecting them.<sup>6</sup> The basic assumption of the study is that minorities aim to be included in the processes of decision-making on issues affecting them (including the preceding consultation processes),

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3 Council of Europe: Secretariat of the Framework Convention for the Protection of National Minorities, *Advisory Committee on the Framework Convention for the Protection of National Minorities: Opinion on “the former Yugoslav Republic of Macedonia”, Adopted on 27 May 2004*, 02 February 2005, ACFC/INF/OP/I(2005)001. Website of the Council of Europe. < [http://www.coe.int/t/dghl/monitoring/minorities/3\\_fcnmdocs/PDF\\_1st\\_OP\\_FYROM\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_1st_OP_FYROM_en.pdf)>. Last accessed 15 October 2011.

4 Council of Europe: Secretariat of the Framework Convention for the Protection of National Minorities, *Advisory Committee on the Framework Convention for the Protection of National Minorities: Second Opinion on “the former Yugoslav Republic of Macedonia”, Adopted on 23 February 2007*, 9 July 2008, ACFC/OP/II(2007)002, Website of the Council of Europe. < <http://www.unhcr.org/refworld/docid/487778032.html>>. Last accessed 15 October 2011.

5 European Commission, *The Former Yugoslav Republic of Macedonia - Progress Report 2010*, <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/mk\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mk_rapport_2010_en.pdf)>. Last accessed 15 May 2011.

6 Myntti, Kristian. *A Commentary to the Lund Recommendations on the Effective Participation of National Minorities in Public Life*. Abo Akademi University: Institute for Human Rights, 2001: 41.

as well as in the public life. It is important to emphasize that the study, while acknowledging the existing debates on the use of the term *minorities*, as well as the refusal of some minority communities to use this term, does not engage or contribute to these discussions. For this purpose, the terms are used consistently with the definitions and delimitations as presented in part III(C).

## B. Context

According to the last official census from 2002, the ethnic structure of the population of Macedonia is composed of 64.8% Macedonians, 25.17% Albanians, 3.85% Turks, 2.66% Roma, 1.78% Serbs, 0.84% Bosniaks, 0.48% Vlachs and 1.04% in the category “other”.<sup>7</sup> According to the same census, the Macedonian language is the mother tongue to 66.49% of the population, Albanian to 25.12%, Turkish to 3.55%, Romani language to 1.9%, Serbian to 1.22%, Bosnian to 0.42%, Vlach to 0.43%, while 0.95% of the citizens speak other language as their mother tongue.<sup>8</sup> The religious background of the population shows that 64.78% of the population declared themselves as Orthodox Christians, 33.33% as Muslims, 0.335% as Catholics, 0.03% as Protestants, while 1.52% do not identify themselves with any religion.<sup>9</sup> In relation to gender structure, 51% of the population are males, while around 49% are females.<sup>10</sup>

The peaceful separation from the Socialist Federative Republic of Yugoslavia (SFRY) makes Macedonia the only country that avoided the bloodshed in the process of acquiring independence from the former federation. The period of wars on the territories of former Yugoslavia was for Macedonia a period of several embargoes, as well as of diplomatic efforts for recognizing its independence and becoming a member state in the significant global and

7 1,297,981 Macedonians, 509,083 Albanians, 77,959 Turks, 53,879 Roma, 35,939 Serbs, 17,018 Bosniaks, 9,695 Vlachs and 20,993 “other”. The Census of Population, Households and Dwellings in the Republic of Macedonia, 2002. Book X. Total Population According to the Ethnic Affiliation, Mother Tongue and Religion. *Website of the Republic of Macedonia State Statistical Office*. [Попис 2002 – Книга X: вкупно население според етничка припадност, мајчин јазик и религија. Државен завод за статистика. *Официјална веблокација на Државниот завод за статистика*.] <<http://www.stat.gov.mk/publikacii/knigaX.pdf>>. Last accessed 29 April 2011.

8 Macedonian language is mother tongue to 1,344,815 citizens, Albanian language to 507,989, Turkish to 71,757, Romani language to 38,528, Serbian to 24,773, Bosnian to 8,560, Vlach language to 6,884, while 19,241 citizens speak other language as their mother tongue. The Census of Population, Households and Dwellings in the Republic of Macedonia, 2002. Book X. Total Population According to the Ethnic Affiliation, Mother Tongue and Religion. *Website of the Republic of Macedonia State Statistical Office*. [Попис 2002 – Книга X: вкупно население според етничка припадност, мајчин јазик и религија. Државен завод за статистика. *Официјална веблокација на Државниот завод за статистика*.] <<http://www.stat.gov.mk/publikacii/knigaX.pdf>>. Last accessed 29 April 2011.

9 1,310,184 are Orthodox Christians, 674,015 are Muslims, 7008 are Catholics, 520 are Protestant, while 30,820 belong to other religion. The Census of Population, Households and Dwellings in the Republic of Macedonia, 2002. Book XI. Total Population According to the Sex and Age. *Website of the Republic of Macedonia State Statistical Office*. [Попис 2002 – Книга XI: вкупно население според пол и возраст. Државен завод за статистика. *Официјална веблокација на Државниот завод за статистика*.] <<http://www.stat.gov.mk/publikacii/knigaXI.pdf>>. Last accessed 29 April 2011.

10 Ibid.

regional organizations (besides the positive opinion of the so called Badinter Arbitration Committee),<sup>11</sup> as a result of the country's dispute with Greece regarding its constitutional name, which is still on going. As a consequence of the crisis in Kosovo only few years after the end of the war in Bosnia and Herzegovina, a wave of refugees enters the country. The 2001 conflict between the state security forces and the National Liberation Army (ONA), declaratively representing and fighting for greater rights of the ethnic Albanian community in Macedonia, ended with the signing of the OFA in August, 2001 (more on the nature and the content of the OFA in part II of this study).

According to the Constitution, Macedonia is a "sovereign, independent, democratic and social state [in which] the sovereignty comes from the citizens and it belongs to the citizens" (Article 1.2). It envisages a semi-parliamentary political system, with separation of power to legislative, executive and judiciary, as well as the existence of single-degree local self-government.

The Parliament has the legislative power, as a representative body of the citizens where in regular four-year mandates seat 123 representatives, elected on general, direct and free elections by secret ballot (Article 62). The executive power is shared by the President and the Government. The President is elected on general and direct elections for a five years mandate (Article 79, 80), while the Government is elected by the Parliament, on proposal of the mandate entrusted by the President to the candidate of the party/parties with majority of representatives in the Parliament (Article 88-91). The judiciary power is exercised by the courts, whereas the Public Prosecutor is the highest juridical independent body. The Constitutional Court which safeguards the constitution and its legitimacy is independent and it is not part of the regular court system. The local self-government on the other hand, is organized in 85 units of local self-government (ULSG): 84 municipalities and the City of Skopje as separate unit of local self-government.

The Electoral Code determines the manner, conditions and the procedure for the Parliamentary and Presidential elections, as well as the local elections - members of the Councils of the municipality (the Councils) and the Mayors in the ULSG. According to it, the MPs are elected in nine electoral constituencies, pursuant to the proportional electoral model, except in the three electoral constituencies where the electorate votes in the diplomatic-consular representation offices, where the majority rule applies (first round of voting). The President is elected through the majoritarian electoral model in one electoral constituency. The elections at the local level are held in all units of local self-government, through the proportional model for the election of the Council, and through the majoritarian model for the mayors (Electoral code - consolidated text, Article 4). The laws envisage a possibility for non-secondary inclusion of the citizens in the local self-government (details given in part IV of this study).

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11 For more information on the Badinter Commission, see: Pellet, Alain. The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples, *European Journal of International Law*, 3 (1), 1992: 178-185. For more information on the International Conference for ex-Yugoslavia, see: De Rossanet, Bertrand. Protecting the rights of ethnic and national communities and minorities: the experience of the International Conference on the Former Yugoslavia, *International Journal of Group Rights*, 2, 1994: 79-89.





# Theoretical framework framework

*Protection and promotion* of minority rights are essential for multicultural societies. The principles of non-discrimination, equality and participation in all spheres of public life stand at the core of the adequate minority protection, i.e. affirmation of inclusive policies, participation in decision-making processes and access to state power, the right to exercise cultural identity and cultural distinctiveness (prohibition of assimilation, segregation, etc.). Thus, the theoretical framework herewith presented is the basis for the empirical analysis following it. Therefore, the basis of the minority protection system is presented, followed by an overview of the theories of diversity management - consociationalism and the integrative model, respectfully. Last but not least, the international legal background of the right to effective political participation is presented.

### A. System of Minority Protection

The contemporary system of minority rights protection is based on two pillars – the non-discrimination and the identity pillar. The non-discrimination principle entitles all human beings to rights and freedoms, and equality before the law, without discrimination, as well as it allows the application of positive measures of action (or affirmative action) for achieving full and effective equality.<sup>12</sup> The second pillar or the minority identity rights enable the necessary conditions for expressing, maintaining and developing the cultural and other identities of the minority groups.<sup>13</sup> The effective participation of the minorities is an essential part of the two pillars as it provides for equal initial conditions for participation in the society: entitlement to the right to political participation without discrimination, existence of effective mechanisms for protection against assimilation, i.e. measures for preserving identity within the frames of the minority culture.<sup>14</sup>

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- 12 The study acknowledges the terminological differences between the positive action measures and the affirmative actions that resulted from the socio-cultural contexts of the origin of the terms, but in the study we will use the positive action measures as more inclusive term and closer one to the European context.
- 13 See: Henrard, Kristin. Non-discrimination and Full and Effective Equality. in Marc Weller (ed.). *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*. Oxford: Oxford University Press, 2007: 75-147.; Machnyikova, Zdenka and Lanna Hollo, The principle of non-discrimination and full and effective equality and political participation. in Marc, Weller and Nobbs, Katherine. (eds.). *Political Participation of Minorities - A Commentary on International Standards and Practice*. Oxford: Oxford University Press, 2010: 95-149.
- 14 Machnyikova, Zdenka and Lanna Hollo, The principle of non-discrimination and full and effective equality and political participation. in Marc, Weller and Nobbs, Katherine. (eds.). *Political Participation of Minorities - A Commentary on International Standards and Practice*. Oxford: Oxford University Press, 2010:95.

## B. Managing Ethnic Diversity

In ethnically divided societies democracy is measured through inclusion and exclusion, or access to power, and the role of ethnic identities is to ‘determine who will be included and who will be excluded.’<sup>15</sup> Liberal democracy, in its conventional majoritarian model<sup>16</sup> “either does nothing about ethnic exclusion or actually fosters it,”<sup>17</sup> as it fails to fully integrate minority groups in the society. In that sense, power-sharing democracy provides at least a basis for an inclusive system of ethnic and/or group conflict regulation, by allowing multi-ethnic societal and political landscapes to shape the political system as it aims at political, economic, societal and cultural participation of all ethnic groups in the polity.

### 1. Consociational Democracy

The consociational approach, as developed by the Dutch political scientist Arend Lijphart, is system of rule in societies divided along ethnic, religious, or cultural lines, which withholds the basic idea of managing the differences by providing power guarantees to each significant identity group. Thus, the key - point of the model is joint rule and decision - making based on consensus.

The consociational approach falls under the umbrella of the theories of power-sharing democracy, offering alternative models to the simple majoritarian democracies.<sup>18</sup> The two main models of power-sharing are the Horowitz’s integrative model and the Lijphart’s consociational model.<sup>19</sup> Sisk describes them as conceptual poles in a spectrum of specific conflict-regulating institutional arrangements and practices promoting power sharing.<sup>20</sup> Indeed, there are important differences - theoretical and practical ones - as both types contain power sharing provisions, but are based on different arrangements, objectives, and most importantly, rest on different assumptions.<sup>21</sup>

The term consociationalism is used for the first time by Johannes Althusius in 1603 in *Politica Methodice Digesta* as a concept *consociation* - Latin term for cooperation in union.<sup>22</sup> Lijphart is also not the first one to define the term itself, as Lembruch analyzes the cases

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15 Horowitz, D. Democracy in Divided Societies, in L. Diamond & M.F. Plattner, (eds.), *Nationalism, Ethnic Conflict, and Democracy*. Baltimore, MD: The Johns Hopkins University Press, 1994: 35-55.

16 That is, democracy heedless of the special needs of divided societies. As defined in: Horowitz, Donald. Some realism about peacemaking, in Andreas Wimmer et al., (eds.). *Facing Ethnic Conflicts. Toward a New Realism*. Boulder: Rowman & Littlefield, 2003.

17 Horowitz, D. Democracy in Divided Societies, in L. Diamond & Plattner, M.F. (eds.). *Nationalism, Ethnic Conflict, and Democracy*. Baltimore, MD: The Johns Hopkins University Press, 1994: 35-55.

18 Sisk, Timothy. *Power Sharing and International Mediation in Ethnic Conflicts*, Washington, DC: USIP, 1996: ix.

19 Ibid: ix.

20 Ibid, ix.

21 Reynolds, Andrew. Majoritarian or Power - Sharing Government. in Markus M.L. Crepez, Koelble, t. & Wilsford, D. (eds.). *Democracy and Institutions: The Life Work of Arend Lijphart*. Ann Arbor: University of Michigan Press, 2000.

22 Lijphart, Arend. *Democracy in Plural Societies: A Comparative Exploration*, New Haven: Yale University Press, 1977: 1.

of Austria and Switzerland as *Proporzdemokratie* or *Konkordanzdemokratie*, while Luis and Akke are mentioned as his predecessors, with their work in Western Africa.<sup>23</sup> Lijphart uses the term for the first time to describe the system in the Netherlands in *The politics of accommodation: pluralism and democracy in the Netherlands* published in 1968.<sup>24</sup> Describing the system in the Netherlands, which on one hand is democratic, but on another it is different from the simple majority rule applied in most of the European societies, he further develops the model and later argues for its application in many both European and non-European societies. One of the main characteristics of all cases is that the societies are divided along ethnic, ideological or linguistic lines, or along combinations thereof.

Lijphart defines the phenomenon as “governance of an elite cartel formulated in a way that the democracy with fragmented political structure is being transformed into stable democracy”, considered as the main definition for the model.<sup>25</sup> Basically, consociationalism advocates set of principles that, if applied both within legal and political bodies and mechanisms, and informal practices, allow for each significant identity group or segment in a society representation and decision-making power on common issues, as well as degree of autonomy over issues of importance to the group.<sup>26</sup> Hence, the backbone of the model is decision-making through consent of all the significant groups in the society, and regardless whether it is informally or formally regulated, all of the groups need to have access to power and to all the resources.<sup>27</sup>

In conclusion, the consociational approach aims to model the polity so as to provide the significant groups in the society equal status and representation, thus securing maximal protection and recognition. In the context of politics of nationalism and ethnicity, the consociationalist model of governance allows peaceful coexistence of more than one nation or ethnic group in the state on the basis of separation, yet equal partnership rather than the domination by one nation of the other(s).<sup>28</sup>

## 2. Basic Principles

The phenomenon of consociational democracy assumes four basic premises, as developed by Lijphart.

The first and undoubtedly one of the most important mechanisms is the power – sharing cross-community executive or (1) grand coalition, formed of the leaders of all significant groups of the society. This is followed by (2) veto rights for minorities, (3) proportional repre-

23 Andeweg, R. Consociational Democracy, *Annual Reviews of Political Science*, 3, 2000: 510-511.

24 Lijphart, Arend. *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*. Berkeley: University of California Press, 1975.

25 Lijphart, Arend. Consociational democracy, *World Politics*, 21, 1969: 207-225.

26 Sisk, Timothy. *Power Sharing and International Mediation in Ethnic Conflicts*, Washington, DC: USIP, 1996: 5.

27 Schneckener, U. Making Power-Sharing Work – Lessons from Successes and Failures in Ethnic Conflict Regulation, *Journal of Peace Research*, 39, 2002: 203-228.

28 Kellas, J. *The Politics of Nationalism and Ethnicity*, St. Martin's Press, New York, 1998: 178.

sentation within public administration and public resources, and last but not least (4) group autonomy or self-governance.<sup>29</sup>

However, before focusing on the basic principles, it should be noted that at the basis of this model lies the idea of elite cooperation, which at the same time is the most often criticized assumption of consociationalism.<sup>30</sup> Even in terms of deep group differences, “the integrative cooperation between the elites is necessary and sufficient condition for managing conflicts.”<sup>31</sup> Theoretically, the actions of the elites are the missing link between the divided society and political stability, or the actions of the political elites and group leaders towards building potential relations towards the centre. Furthermore, Lijphart considers that the single stimulus for cooperative actions of the elites is the political power. Based on the theory of the minimal winning coalition of Ricker, Lijphart points out that the parties aim to be and stay in power.<sup>32</sup> “The only way for the ethnic or any other party to not just have power, but also to stay in power is to achieve compromises with their coalition partners, because they have a strong stimulus for compromise, and that is the political power [...]”<sup>33</sup>

According to the discussion above, the broad coalition is the most important condition for the success of consociational governing. This is a “vital instrument for the attainment of political stability in plural societies”, as by being involved in the government of the country together, parties that do not mutually trust each other have some kind of guaranties of political security.<sup>34</sup> However, the argument here is that significant groups should be included and the government needs to be broad, but not necessarily along ethnic lines only and/or ethnic parties only.

The institutional forms the consociational model can take are various, and indeed, the model can be compatible with a rich spectrum of institutional solutions, developed in different types of societies and followed by different results.

As a result of several factors, the parliamentary solution is ‘superior’ to the other variations. First of all, it is hard to form a coalition with leaders of all significant groups in the society within a presidential system, because one person leadership is not relevant for consociation-

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29 Lijphart, Arend. *Democracy in Plural Societies: A Comparative Exploration*, New Haven: Yale University Press, 1977: 25-52.

30 On the critiques, please see: Horowitz, Donald. *A Democratic South Africa? Constitutional Engineering in a Divided Society*, Berkley, CA: University of California Press, 1991

31 Sisk, Timothy. *Power Sharing and International Mediation in Ethnic Conflicts*, Washington, DC: USIP, 1996: 34.

32 Lijphart, Arend. The Wave of Power-Sharing Democracy, in Andrew Reynolds, (ed.), *Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*. Oxford: Oxford University Press, 2002:43-44.

33 Lijphart, Arend. The Wave of Power-Sharing Democracy, in Andrew Reynolds, (ed.), *Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*. Oxford: Oxford University Press, 2002: 44.

34 Lijphart, Arend. *Democracy in Plural Societies: A Comparative Exploration*, New Haven: Yale University Press, 1977: 30.

alism though, as Lijphart reminds, they are not fully incompatible.<sup>35</sup> The second reason to give the primacy to the first alternative is that ‘the executive authority is elected by the legislative authority and it depends on its trust, while in the presidential systems, the executive authority is elected directly or indirectly by the voters and it does not depend on the trust of the legislative authority’.<sup>36</sup> In addition to this is the fact that the executive authority in a parliamentary system is a ‘joint’ body. In this case, one could take into consideration many systems that result from these two forms, but because of the stated criteria, the study only elaborates the two main options.<sup>37</sup>

The second principle, the minority veto, is “the ultimate weapon that minorities need to protect their vital interests”, as even if represented in a grand coalition cabinet, they can be easily outvoted and thus marginalized by the majority/ies. The minority veto is key when ‘vital interests of minorities are at stake’ mainly because of the protective mechanisms that were explained earlier.<sup>38</sup>

The proportionality principle in the spheres of political representation, public service, and public funds, is providing all groups inclusion and fair distribution, with an end goal to secure fair (and proportional) representation of ethnic minorities.<sup>39</sup> This principle, as Sisk reminds, lies behind consociational practices in almost every sphere of political life, as proportionality is introduced at all levels of governance and decision making (central, regional and local) in order to provide access to power for all groups and especially the numerically weaker groups, as well as ensure participation and groups influence commensurate with their overall size in society.<sup>40</sup> The principle should be applied in two directions, namely through electoral systems - the composition of the governing elite should commensurate the demographic structure, and, through the distribution of resources - fair distribution of both public administration posts and public spending, or allocation of resources.

The principle of group autonomy is the one securing groups control over “their” problems, as the issues of common concern for all citizens are to be made jointly, and all others should be left to the individual group. Segmental autonomy is an ultimate difference from the ma-

35 Lijphart, Arend. *Democracy in Plural Societies: A Comparative Exploration*, New Haven: Yale University Press, 1977: 32-36. See also Lijphart, Arend. *The Wave of Power-Sharing Democracy*, in Andrew Reynolds, (ed.), *Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*. Oxford: Oxford University Press, 2002: 49-51.

36 Lijphart, Arend. *The Wave of Power-Sharing Democracy*, in Andrew Reynolds, (ed.), *Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*. Oxford: Oxford University Press, 2002: 49.

37 In the consociational approach there is an open debate on the republican as opposed to the monarchist system, because that too has a role in the founding of a bigger coalition, but since it is irrelevant for the subject of the discussion of this study, it will not be reviewed.

38 Lijphart, Arend. *The Power-Sharing Approach*, in J. Montville, (ed.), *Conflict and Peacemaking in Multiethnic Societies*, New York: Lexington Books, 1991: 495.

39 Ibid: 491-509.

40 Sisk, Timothy, *Power Sharing and International Mediation in Ethnic Conflicts*, Washington, DC: USIP, 1996: 37.

majority rule which entails minority rule: rule by the minority group over itself in the area of the minority's exclusive concern.<sup>41</sup>

In cases where groups are geographically concentrated, Lijphart suggests a form of federation, and in other cases he suggests a non-territorial form of autonomy ("corporative federalism") or a combination of territorial and non-territorial forms of autonomy.<sup>42</sup>

Another major issue is the electoral system, due to the influence it has on the representation and participation in decision-making on all levels, though an electoral system that can serve its purpose in the post-conflict period does not have to be the best long-term conflict management solution.<sup>43</sup> The consociational model recommends the proportional electoral system due to one simple reason – it guarantees equitable representation of the minorities, as opposed to the majoritarian electoral system, which in the deeply divided societies favours one ethnic group (the majority one) and excludes the others. As Norris underlines, majoritarian electoral systems, like first past the post system, exaggerate the parliamentary lead for the party in first place with the aim of securing a decisive outcome and government accountability, thereby excluding smaller parties from the division of spoils. Theoretically, in comparison with majoritarian, PR electoral system ensures the representation of minorities that have shown will to be represented as minority parties, however if a threshold is introduced very often small but politically and historically significant groups cannot ensure parliamentary representation.<sup>44</sup>

In order for the consociational democracy to be successful, three recommendations are directed towards the electoral systems: superiority is given to the proportional lists; closed or nearly closed lists are favoured over the open proportional lists; low electoral thresholds, with the purpose to ensure full or near-to-full proportionality, because the size of the group can be below the threshold.<sup>45</sup>

In addition to the main principles of the consociational approach, there is a list of favorable conditions for successful consociational arrangements: (1) absence of a majority ethnic group, as there is a possibility for it to turn into majoritarianism; (2) absence of large socio-economic differences among the groups; (3) roughly equal size of the groups, as it gives a notion of balance; (4) society consisted of not too many groups, so to make negotiations possible and not very complicated; (5) the total population of the state to be relatively small, as a factor favoring a simple decision-making process; (6) existence of external threats, which

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41 Lijphart, Arend. *Democracy in Plural Societies: A Comparative Exploration*, New Haven: Yale University Press, 1977: 41.

42 Lijphart, Arend. The Power-Sharing Approach, in J. Montville, (ed.), *Conflict and Peacemaking in Multi-ethnic Societies*, New York: Lexington Books, 1991: 494.

43 Malazogu, L. and Dugoli, L. Reforming the Electoral System of Kosova, *Conference on Electoral Design*, May 27, 2003, The Forum, Prishtina, 2003: 4.

44 Lijphart, Arend. *Electoral Systems and Party Systems. A Study of Twenty-seven Democracies, 1945–1990*. Oxford: Oxford University Press, 1994: 140.

45 Lijphart, Arend. The Wave of Power-Sharing Democracy, in Andrew Reynolds, (ed.), *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*. New York: Oxford University Press, (37–54): 52–53.

will promote unity; (7) overarching loyalties that can weaken ethnic affiliations; (8) geographically concentrated ethnic groups, so the federalization to be an alternative for group autonomy; (9) previous tradition of accommodation and compromise.<sup>46</sup>

In conclusion, the type and degree of implementation of the package of consociational arrangements is crucial in post – conflict divided societies. However, the consociational arrangements as such are not the only precondition for successful conflict management and institution – building. Actually, consociational arrangements are maybe a solution with higher probability than the liberal democratic system to lead to accommodation of ethnically diverse polity; however there is a complex interdependence between its effectiveness and efficiency on one side and external factors in the process, such as political culture, economic development, and international community involvement, to name few. The consociational model itself is not a one-size-fits-all solution, but assumes a variety of institutional forms, and different forms do not equally well lead to ethnic accommodation, so the result will also vary.

### C. The Right to Effective Political Participation in International Law

It is often considered that the ideals of national equality and the manifestation of central power lead towards repression of those viewed as “others”.<sup>47</sup> According to Capotorti, there are three main development distinctions in minority protection in modern history: (1) all major multilateral agreements include clauses for minority rights; (2) protection expands from religious minorities to also other types of minorities; and (3) the number of rights included in these agreements increases.<sup>48</sup>

Minority rights start developing dynamically following the end of World War I, with the nation-state model of political organization and the principle of national self-determination as a tool to address challenges of diversity. Despite of the homogenization of the European population, many European states after the end of the WWI were still inhabited by minority groups, with different language and/or culture than the majority. Thus, the peace agreements signed under the auspices of the League of Nations (LoN) introduced clauses for protection of the minorities. In that respect, the Permanent Court of Justice, as one of the bodies of the LoN, with the adoption of the „Greek-Bulgarian borders“<sup>49</sup> and „Schools for the

46 Lijphart, Arend, *The Power-Sharing Approach*, in J. Montville, (ed.), *Conflict and Peacemaking in Multiethnic Societies*, New York: Lexington Books, 1991: 500. Originally developed in Lijphart, A. *Power-sharing in South Africa*, *Policy Papers in International Affairs* 24, 1985.

47 Thornberry, Patrick. *International Law and the Rights of Minorities*. Oxford: Clarendon Press, 1992: 1 - 2.

48 Capotorti, Francesco. *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities*. New York: UN Publications, 1991: 2.

49 *Greco-Bulgarian Communities*, Advisory Opinion, 1930. Permanent Court of International Justice. (Ser. B), No. 17, (July 31). <[http://www.worldcourts.com/pcij/eng/decisions/1930.07.31\\_greco-bulgarian.htm](http://www.worldcourts.com/pcij/eng/decisions/1930.07.31_greco-bulgarian.htm)> Last accessed 18 May 2011: 21

minorities in Albania<sup>50</sup> decisions, made a crucial contribution to the development of the international legal standards for minority protection.

Upon the end of World War II with the establishment of the United Nations (UN), the frame for protection is redefined and it focuses on equality and individual approach – protection and promotion of the rights and freedoms of the individuals. The universal approach for the protection of human rights, which incorporates minority rights, without special affirmation, is founded in the UN Charter<sup>51</sup> and the Universal Declaration of Human Rights (UDHR).<sup>52</sup> Simultaneously, regional organizations are formed, of which, of special importance for this purpose are the European regional organizations - the CoE, the OSCE and the EU.<sup>53</sup>

The fall of the Berlin Wall and the worsening of the minority communities position in Central and Eastern Europe (CEE) and Southeast Europe (SEE), initiates a new wave of initiatives in the frames of the international organizations for minority protection. Significant documents in this period were adopted by the UN, CoE and OSCE. Accordingly, the following chapter elaborates the minority protection framework the regional organizations establish. Although minority protection within the EU is in the process of development, the study reflects on it due to the enlargement policy significance for the CEE and SEE countries, part of which is minority protection. EU enlargement is often seen as an initial catalyst for the development of minority policies, often considered by some authors as comparable to the development of the protection of minorities in the frames of CoE and OSCE.<sup>54</sup>

## 1. The Right to Effective Political Participation in the Instruments of the United Nations

The two basic documents of the UN - the UN Charter and the Universal Declaration of Human Rights (1948) - do not contain provisions for protection of minorities and political participation.<sup>55</sup> The Article 21 of the UDHR is the one defining political participation.<sup>56</sup> Accord-

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50 Permanent Court of International Justice. *Minority Schools in Albania*. Greece vs. Albania. Advisory Opinion 26. Permanent Court of International Justice. (Ser. A./B.), No. 64, (1935). <[http://www.icj-cij.org/pcij/serie\\_AB/AB\\_64/01\\_Ecoles\\_minoritaires\\_Avis\\_consultatif.pdf](http://www.icj-cij.org/pcij/serie_AB/AB_64/01_Ecoles_minoritaires_Avis_consultatif.pdf)>. Last accessed 18 May 2011: 64

51 United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, <<http://www.unhcr.org/refworld/docid/3ae6b3930.html>>. Last accessed 18 April 2011.

52 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), <<http://www.unhcr.org/refworld/docid/3ae6b3712c.html>>. Last accessed 18 April 2011.

53 For the purpose, EU is treated as an international organization. The existence of theories and debates on the nature of the EU are taken into consideration, however the latter are not of essential significance for the focus of this study.

54 Toggenhurn, Gabriel von. *A remaining share of a new part? The Unions' Role vis-à-vis Minorities after the Enlargement Decade*. EUI Working papers, EUI Department of Law, 2006: 96.

55 UDHR is a Declaration and as such it is not legally-binding, however in due time (as well as other international documents of universal importance and character) it shall be considered binding for all. Its universal character points out to the equal respect and protection of everyone's rights and freedoms.

56 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), <<http://www.unhcr.org/refworld/docid/3ae6b3712c.html>>. Last accessed 18 April 2011.

ingly, every individual is entitled to participate in governance, either directly or through democratically elected representatives, as well as to equal access to the public services in the country of residence. Article 21 emphasizes the significance of the will of the people, expressed through periodic and free and fair elections, with universal and equal suffrage by secret ballot or according to the adequate procedures for democratic elections as stipulated within the Constitution.<sup>57</sup>

Acknowledging the significance of minority protection, the Human Rights Commission forms a sub-commission on prevention of discrimination and protection of minorities. In its work, the sub-commission has prepared and suggested, inter alia, adoption of the draft Convention on prevention of discrimination and protection of minorities, unfortunately not adopted by the General Assembly.<sup>58</sup> Subsequently, the sub-commission withdrew its focus from the protection of minorities and focused only on issues related to prevention from discrimination.<sup>59</sup>

Article 27 of the International Covenant on Civil and Political Rights (ICCPR) is the first legally binding provision regulating minority protection. According to it, “in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”<sup>60</sup> Later, the Human Rights Committee (HRC) adopts the General Comment no. 23, which refers to the right of the minorities and to Article 27.<sup>61</sup>

The ICCPR reflects on the rights of minorities also through the provisions on non-discrimination and protection from discrimination, participation in political processes, associations, and through the right to freedom of opinion and expression, freedom of thought, conscience and religion (Articles 18-26).<sup>62</sup> The Article 25 is of particular importance as it guarantees the right to participation in public life directly or through freely chosen representatives, the right to elect and be elected, as well as the right to have access on general terms of equality to the public services in the country of residence. The General Comment no. 25 of the HRC introduces the need for positive measures so to target the inequalities hindering the effec-

57 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), <<http://www.unhcr.org/refworld/docid/3ae6b3712c.html>>. Last accessed 18 April 2011.

58 Andrysek, Odrich. *Report on the Definition of Minorities*. SIM Special No 8., Utrecht: Netherlands Institute of Human Rights, Studie- en Informatiecentrum Mensenrechten (SIM), 1989: 30-31.

59 Capotorti, Francesco. *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities*. New York: UN Publications, 1991: 28

60 UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, UN Web page, <<http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>>. Last accessed 15 October 2011.

61 UN Human Rights Committee (HRC), *CCPR General Comment No. 23: Article 27 (Rights of Minorities)*, 8 April 1994, CCPR/C/21/Rev.1/Add.5, available at <<http://www.unhcr.org/refworld/docid/453883fco.html>>. Last accessed 15 October 2011.

62 UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, UN Web page, <<http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>>. Last accessed: 15.10.2011.

tive implementation of the rights guaranteed by the Covenant, such as low degree of education, language barriers, poverty, restricted freedom of movement, etc. Thus, although Article 25 does not explicitly mention minorities, it refers to them as well. The broad application of Article 25 is particularly emphasized in the individual opinion of the committee member Martin Scheinin in the *Diergaardt v. Namibia* case, which claims that the HRC unnecessarily emphasizes the individual nature of the rights guaranteed by the Article 25,<sup>63</sup> since there are situations in which special arrangements should be undertaken so the effective political participation of the members of the minorities can be guaranteed.<sup>64</sup>

The only UN instrument focusing on minority groups is the Declaration on the Rights of Persons belonging to National, Ethnic, Religious and Linguistic Minorities, from 1992 (UN Declaration on Minorities). Promotion and protection of the identity of the minorities stand at the basis of it, requiring non-assimilating policies from the states, possibilities for education in mother tongue, participation in the social and public life, effective political participation in the decision-making processes that influence the groups, organizing and contacting same or similar groups inside and outside the country, etc. The provisions that are specifically related to the participation are embedded in the Articles 2(2), 2(3), 4(5) and 5(1). The UN Declaration on Minorities points out the necessity for an inclusive, multicultural and democratic society so the right to effective participation to be fully realized, without discrimination (Article 3) and guaranteeing protection of identity, diversity, culture and other minority group specificities (Article 2, 4). The Articles 4 and 5 impose on the states the responsibilities to provide the necessary conditions for full realization of the rights and freedoms. An essential element is the elimination of all forms of discrimination through affirmative action so the conditions for the implementation of the rights of the persons belonging to minorities can be guaranteed.<sup>65</sup> Accordingly, affirmative action as a concept applies to the efforts undertaken by the state so to guarantee equality of opportunity and to ensure equal access to the guaranteed rights and freedoms to all of its citizens.

As a moral and political, but not legally binding instrument, the UN Declaration on Minorities allows the expressed efforts to be relativized through reservations, leaving space for the states, on behalf of sovereignty and territorial integrity, to freely shape their policies towards the minorities. However, recent activities within the UN had as a goal to promote the UN Declaration on Minorities and to clarify its provisions, so to facilitate the states in its implementation and monitoring. Hence, the Working Group for the Rights of the Minori-

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63 Human Rights Committee. *Diergard v. Namibia*. *Website of the Office of the High Commissioner on Human Rights*. <<http://www.ohchr.org/Documents/Publications/SDecisionsVol7en.pdf>>. Last accessed on 28 August 2011.

64 As in: Pentassuglia, Gaetano. *Minority Groups and Judicial Discourse in International Law - A Comparative Perspective*. Leiden: Brill NV, 2009: 88

65 United Nations: Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, Adopted 4 April 2005, E/CN.4/Sub.2/AC.5/2005/2, <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/133/85/PDF/G0513385.pdf?OpenElement>>. Last accessed 15 October 2011.

ties established 1995 as a working body of the UN Sub-Commission for Promotion of the Human Rights, deals with promotion and implementation of the Declaration, and addresses the problems minorities face by providing recommendations.<sup>66</sup> The Working Group in 2005 issues a Comment on the UN Declaration on Minorities related to the effective political participation. As pointed out by Klimova - Alexander, the comment emphasizes the significance of effective political participation of minorities as it not only reviews the minimal obligations deriving from Article 2(3), but also enlists good practices of its implementation. In the light of that, Klimova-Alexander claims that the comment is neither detailed nor advanced.<sup>67</sup>

Furthermore, the Declaration on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance of 2001 (the Durban Declaration), its Action Plan, as well as the revision of the progress with regards to the goals set by the declaration from 2009, call upon the states to apply the provisions contained in the UN Declaration on Minorities. The documents call upon the need to improve the access to, and the realization of the right to effective participation in the various spheres of public life by the members of the minority groups.<sup>68</sup>

Within the UN, there are also other mechanisms for monitoring of the different practices aiming at protection of the rights of minorities. In 2005, the Independent expert for minority issues is established, while in 2007 the Human Rights Council forms a Forum on Minority Issues intended to act as a platform for dialogue and cooperation on issues related to promotion and protection of national, ethnic, religious and/or linguistic minorities, but also to provide additional expertise and assistance to the work of the Independent expert on minority issues.<sup>69</sup> Important to mention here is the second session of the Forum dedicated to the effective political participation. The main recommendations resulting from the session address all the actors (governments, political parties, state institutions for human rights protection, civil society, media, UN mechanisms for human rights protection, the international community and other UN agencies), to promote diversity and to develop mechanisms for protection and promotion of the rights of minorities in the context of political participation. The later has as a goal to ensure the development of adequate strategies for inclusion of minorities in the public life, to increase the awareness (of both minorities and the majority)

66 Guide on Minorities. *Website of the Office of the High Commissioner on Human Rights*. <<http://www.ohchr.org/Documents/Publications/GuideMinorities2en.pdf>>. Last accessed 16 May 2011.

67 Klimova - Alexander, Ilona. Effective Participation by Minorities - United Nations Standards and Practice. in Marc Weller & Nobbs, Katherine (eds.). *Political Participation of Minorities - A Commentary on International Standards and Practice*. Oxford: Oxford University Press, 2010: 286-307.

68 Paragraph 70 of the Review of the Durban Declaration, as in: Klimova - Alexander, Ilona. Effective Participation by Minorities - United Nations Standards and Practice. in Marc Weller & Nobbs, Katherine (eds.). *Political Participation of Minorities - A Commentary on International Standards and Practice*. Oxford: Oxford University Press, 2010: 286-307.

69 Human Rights Council. Human Rights Council Resolution 6/15, Forum on Minority Issues. *Office of the High Commissioner on Human Rights Website*. <[http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_6\\_15.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_15.pdf)>. Last accessed 16 June 2011.

on the significance of the participation of minorities in the public life, and to sensitivize all political and social actors on minority issues.

Klimova-Alexander depicts several additional efforts of the UN relevant for the implementation of the right to effective political participation – the General Comment no. 21 on the right of everyone to take part in cultural life according to Article 15(1a) of the ICESCR, the Recommendations of the International Seminar on Cooperation for the Better Protection of the Rights of Minorities regarding participation of minorities in development, the Minority Profile and Matrix (E/CN4/Sub2/AC5/2006/3), OHCHR Guidelines and Good Practice for Policing in Diverse Societies, UNDP Resource Guide on Minorities in Development, as well as the UNDP and the Inter-Parliamentary Union (IPU) project “Promoting inclusive parliaments: The representation of minorities and indigenous peoples in parliaments”.<sup>70</sup>

## **2. The Right to Effective Political Participation in the Instruments of the Council of Europe**

The core instrument for human rights and fundamental freedoms protection in the frames of the Council of Europe (CoE) is the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Its significance in relation to minority rights derives from its provisions for non-discrimination contained in Article 14 and Protocol no. 12. On one hand, the ECHR envisages prohibition of discrimination in exercising the rights and freedoms stipulated by the Convention on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (Article 14, ECHR). On the other hand, Protocol no. 12 of the ECHR envisages general prohibition of discrimination. Thus, it determines that “the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.. [...] No one shall be discriminated against by any public authority on any ground such as those mentioned [above]” (Article 1, Protocol no. 12 of the ECHR).

Also significant is Article 3 of the Protocol no. 1 of the ECHR regulating the right to free elections ensuring the free expression of opinion.<sup>71</sup> The article sets the responsibility of states to hold free elections in reasonable intervals by secret ballot, under the conditions that enable citizens to freely express their opinion for the election of the legislative body. Its legally binding character (for all signatories) makes the guaranteed rights and freedoms applicable to the members of the minorities.

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70 Klimova - Alexander, Ilona. Effective Participation by Minorities - United Nations Standards and Practice. in Marc Weller & Nobbs, Katherine (eds.). *Political Participation of Minorities - A Commentary on International Standards and Practice*. Oxford: Oxford University Press, 2010: 286-307.

71 Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, ETS 5, <<http://www.unhcr.org/refworld/docid/3ae6b3b04.html>>. Last accessed 30 June 2011.

The debates for the adequate measures for minority protection in the frame of the CoE date back to 1949.<sup>72</sup> The Standing Conference of Local and Regional Authorities of Europe with the Resolution 192 (1988) drafts the text for the European charter for regional or minority languages, whereas the Parliamentary assembly with Recommendation 1134 (1990) calls for the preparation of either a protocol of ECHR or a separate convention on minorities.<sup>73</sup> The Committee of Ministers of the CoE in 1994 adopted the Framework Convention for the Protection of the National Minorities (FCNM). The period of a half century from the initiation of the debates until the final adoption, as pointed by Steiner, Alston and Goodman, shows that the issue is complex and controversial for the organization. The adoption of the FCNM was partially stimulated by the adoption of the UN Declaration on Minorities, as well as by the mechanisms and standards proscribed by the Conference on Security and Co-operation in Europe (OSCE).<sup>74</sup> The FCNM represents a basic legally binding document for protection of the rights of national minorities at European regional level. Characteristic for the FCNM is that it depicts the responsibilities of the states and not the rights of the minority groups.

According to some authors, the FCNM is not directly applicable, i.e. it represents a program document providing guidance towards the goals that the states should strive to achieve; in other words, it provides flexibility for the states and wide possibilities for interpretation.<sup>75</sup> According to other authors, not only is it applicable, but also persons from the minorities can call upon it before the domestic courts.<sup>76</sup> By assuming the responsibilities resulting from the FCNM, on one hand, the states commit to promote full and effective equality for the members of the minority groups in all spheres of economic, political, social and cultural life, and on the other hand, to provide conditions for maintaining and promoting their unique identity and culture. While it provides a wider range of rights for the members of minorities than that of the UN instruments, it is limited only to the national minorities.<sup>77</sup> The FCNM takes into consideration the issues of non-discrimination, the affirmative action measures that need to be undertaken by the states (Article 4), protection of the cultural, linguistic and religious identity (Article 5), the linguistic issues and their official and everyday usage (Article 10, 11), the right to education and education in mother tongue (Article 12, 13), the effective participation in the political (public) life and the social, economic and cultural life (Article 15), etc.

72 Steiner, Henry J., Philip Alston, Ryan Goodman. *International Human Rights in Context: Law, Politics and Morals*. Third Ed. Oxford: Oxford University Press, 2007: 1019.

73 Shaw, Malcolm N. *International Law*. Sixth Ed. Edinburgh: Cambridge University Press, 2010: 365.

74 Steiner, Henry J., Philip Alston, Ryan Goodman. *International Human Rights in Context: Law, Politics and Morals*. Third Ed. Oxford: Oxford University Press, 2007: 1019.

75 Steiner, Henry J., Philip Alston, Ryan Goodman. *International Human Rights in Context: Law, Politics and Morals*. Third Ed. Oxford: Oxford University Press, 2007: 1019.

76 Marko, Joseph. The Council of Europe Framework Convention on the Protection of National Minorities and the Advisory Committee's Thematic Commentary on Effective Participation. in Marc Weller and Nobbs, Katherine. (eds.). *Political Participation of Minorities - A Commentary on International Standards and Practice*. Oxford: Oxford University Press, 2010: 222-255.

77 Shaw, Malcolm N. *International Law*. Sixth Ed. Edinburgh: Cambridge University Press, 2010: 368.

The basic provision of the FCNM that includes the right to an effective political participation is Article 15 envisaging that “the Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.” The comment on Article 15 of the Advisory Committee on the FCNM in 2008 further explains the basic guidance for interpretation of this right aimed at assisting the states in its realistic implementation. Article 15 of the FCNM refers to the effective participation of minorities in the economic, social, cultural and public life, posing requirements for the states that had ratified it to commit to the creation of conditions for its full implementation. In order to provide real equality between the minorities and the majority in the state, CoE calls upon the following measures which can be undertaken by the states: consultations with the minorities via undertaking adequate process-related and institutional measures within the legislative and administrative decision-making processes for decisions that affect them; inclusion of the members of the minorities in the process of development of plans and programs that affect them; inclusion of the minorities in the research on the influence of the development policies; inclusion in the process of adoption of decisions on central and local level, as well as developing decentralized forms of governance.

For the achievement of an inclusive society, including participation of minorities in public life, the FCNM envisages effective political participation in the decision making process in general, and in decisions directly affecting the national minorities in particular. Participation in decision-making assumes also inclusion in the processes that precede (consultations and negotiations) the decision-making process. One of the conditions for an efficient decision-making process is the participation of minorities in the initiatives that lead towards strengthening the processes, as well as adequate representation of the national minorities in the elected bodies, public administration, the judiciary, local self-government, the type of electoral system, the special governmental structures created for addressing issues that are of direct interest to national minorities, etc. (para. 72-74).

The above shows that the effectiveness of the right to effective political participation can be evaluated on the basis of the possibility for minorities to participate in the processes of decision-making, and in particular in the case of decisions directly affecting them.<sup>78</sup> The manners and mechanisms through which the right to effective political participation can be implemented refer to the free exercise of the right to association, i.e. founding and registering political parties (para. 75), type of electoral system (para. 80), re-delineation of the administrative (electoral) boundaries (para. 88), reserved seats in the parliament for the

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78 Council of Europe, *Framework Convention for the Protection of National Minorities*, 1 February 1995, ETS 157, <<http://www.unhcr.org/refworld/docid/3ae6b36210.html>>. Last accessed 01 October 2011; European Commission for Democracy through Law. *Summary Report on Participation of Members of Minorities in Public Life*, CDL-MIN (98) 1 rev., No.010/95., Strasbourg, 27 February 1998. [http://www.venice.coe.int/docs/1998/CDL-MIN\(1998\)001rev-e.pdf](http://www.venice.coe.int/docs/1998/CDL-MIN(1998)001rev-e.pdf). Last accessed 30 June 2011; Council of Europe: Secretariat of the Framework Convention for the Protection of National Minorities, Advisory Committee's Commentary on the Effective Participation of National Minorities in Cultural, Social and Economic Life and Public Affairs, ACFC/31DOC(2008)001. *Website of the Council of Europe*. <[http://www.coe.int/t/dghl/monitoring/minorities/3\\_fcnmdocs/PDF\\_CommentaryParticipation\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_CommentaryParticipation_en.pdf)>. Last accessed 15 January 2011.

members of the minorities (para. 91), parliamentary committees on minority issues, as well as usage of the languages of the minorities in their work (para. 95), right to veto (para. 97), specialized governmental bodies (para. 103), consultative bodies for minority issues (para. 106-119), etc. Also, of particular importance for the implementation of the right to effective political participation are the processes of decentralization, clear differentiation of the responsibilities between the central and local authorities, as well as effective local authorities and local resources (para. 129).

Article 15 of the FCNM is interpreted jointly with Articles 4 and 5. These provisions contain the promotion of full equality of minorities in all spheres of life and protection against discrimination (Article 4, Framework Convention), as well as the responsibility of the state to provide protection against assimilation and preservation of the identity of the national minorities by preserving the essential elements of their identity (language, culture, religion, tradition, etc.) (Article 5, Framework Convention). In other words, it is necessary for the employment, healthcare and social policies to reflect the needs of the minorities equally as to those of the majority,<sup>79</sup> including the undertaking of measures on part of the state focused on the most vulnerable and marginalized groups in the society.

### **3. The Right to Effective Political Participation in the Instruments of the Organization for Security and Cooperation in Europe**

Regarding minorities, the OSCE focuses on the protection of the identity, language, education and participation in public life of national minorities. Initially, the rights of national minorities in the frames of OSCE were addressed by the OSCE predecessor - the Conference on Security and Co-operation in Europe, (CSCE), starting from the Helsinki Final Act (1975). Furthermore, 1990 can be taken as key year for the development of instruments for the protection of minorities, with the adoption of the Copenhagen Document.

The basic OSCE mechanisms for the prevention of conflicts related to national minorities are the High Commissioner on National Minorities (established in 1992) and the instruments that result from its initiatives. From these instruments, relevant for this study are: the Hague Recommendations Regarding the Education (1996), the Oslo Recommendations Regarding the Linguistic Rights (1998), the Lund Recommendations on the Effective Participation (1999) and the Guidelines on the Use of Minority Languages in the Broadcast Media (2003). The purpose of all these instruments is to assist the states in finding solutions and implementing practices that will relax the existing tensions related to minorities and contribute to their mitigation, as well as to assist the development of inclusive societies and the promotion of democratic development of the countries.

The most significant document for effective political participation adopted in the frames of the OSCE are the Lund Recommendations on the Effective Participation of National Minori-

79 Advisory Committee of the Framework Convention for the Protection of National Minorities. Advisory Committee's Commentary on the Effective participation of national minorities in cultural, social and economic life and public affairs", ACFC/31 DOC (2008)001. *Website of the Council of Europe*. <[http://www.coe.int/t/dghl/monitoring/minorities/3\\_fcnmdocs/PDF\\_CommentaryParticipation\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_CommentaryParticipation_en.pdf)>. Last accessed 15 January 2011.

ties in Public Life (Lund Recommendations), a tool that represents a standard for developing additional instruments for promoting the right to participation of minorities in public life. According to Krzysztof Drzewicki, there are two groups of reasons for the adoption of the Lund Recommendations: ones regarding conflict prevention, as a response to the situation in Europe in the 1990s, and ones regarding lack of standards in the field of protection of minorities.<sup>80</sup> However, John Packer<sup>81</sup> rightfully reiterates that although the experts involved in the preparation of the Lund recommendations take into consideration particularly the events in Europe and more specifically in the Balkans, their design allows for their application in any pluralist society and in all member-states of the OSCE.<sup>82</sup>

However, the development of the Lund Recommendations is not a novelty, but rather an extensive interpretation and elaboration of the existing rules and practices.<sup>83</sup> Also, they have the aim to fill in the gaps that exist in the legally binding documents, which do not elaborate on the right to participation of the minorities in details; the true strength of these principles and recommendations lays in the spectrum of possibilities for effective application in the national legislation.<sup>84</sup>

The Lund Recommendations insist on facilitating the inclusion of minorities in state governance, while preserving their identity with the purpose of promoting good governance. The Lund Recommendations are based on the guiding principles of international law – respect of human dignity, equality, and non-discrimination, but from the aspect of the right to participation of national minorities in the political life of the country at the central level (recommendations 6-10). Hence, the participation of the members of national minorities in the three branches of government are recommendations that lead to inclusion of the minorities in the state structures. Furthermore, the Lund Recommendations point to the political rights such as the right to elections, voting and representation, i.e. participation in the political life, the right to vote and run for public offices without discrimination (recommendation 7), the freedom of formation and activity of political parties (recommendation 8), the introduction of an electoral model that will enable minority representation and influence (recommendation 9) and geographic boundaries of the electoral districts that will enable more adequate representation of the national minorities (recommendation 10). In 2005, OSCE prepared special recommendations for the participation of national minorities in the electoral process.

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- 80 Drzewicki, Krzysztof. OSCE Lund Recommendations in the Practice of the High Commissioner on National Minorities, in Marc Weller and Nobbs, Katherine (eds.). *Political Participation of Minorities - A Commentary on International Standards and Practice*. Oxford: Oxford University Press, 2010: 256-285.
- 81 John Pecker was legal advisor to the High Commissioner in the period when the Lund Recommendations were drafted.
- 82 Packer, John. The Origin and Nature of the Lund Recommendations on the Effective Participation of National Minorities in Public Life. *Helsinki Monitor*, Vol.11, No.4, 2000.
- 83 Drzewicki, Krzysztof. OSCE Lund Recommendations in the Practice of the High Commissioner on National Minorities, in Marc Weller and Nobbs, Katherine (eds.). *Political Participation of Minorities - A Commentary on International Standards and Practice*. Oxford: Oxford University Press, 2010: 256-285.
- 84 Holt, Sally. Lund Recommendations and the Actions of the High Commissioner for National Minorities. *International Journal on Minority and Group Rights*, 12, 123, 2005: 169-188.

One of the mechanisms for effective participation of national minorities in public life pointed out by the Lund Recommendations is the formation of adequate bodies or commissions (besides the above-mentioned parliamentary commissions), to act as a direct link between the authorities and national minorities. Such bodies would complement the role of the representatives of the national minorities and would be in direct relation with the decision-makers. The importance of these bodies is significant, bearing in mind that they are part of the decision-making processes, and from the start, in the creation of policies that are not detrimental for the national minorities. Moreover, the governments should regularly consult such advisory bodies before making decisions, particularly if they directly affect the minorities (recommendations 12 and 13).

The third part of the Lund Recommendations is dedicated to the local self-government, i.e. participation in the decision-making process on local level (recommendations 11, 14-20). The recommendations envisage the so-called “non-territorial possibilities,” through which the participation of the national minorities in creating policies is enabled in areas directly related to their identity, such as education, culture, usage of language and symbols, etc. (recommendation 18). Further, there are options for territorial organization of the states as a manner of more substantial democratic participation of citizens in the public service and in the decision-making processes. Namely, the territorial organization of the state can promote the rights of the national minorities that are territorially concentrated and can enhance their influence on decisions at the local level (recommendation 19). This set of recommendations points out to the possible allocation of competences in areas that are adequate for the central authorities and those which may not be in the domain of local self-government. Although these recommendations are not binding for the states, they provide a spectrum of possibilities that are at the disposal for the states, with the purpose of promoting the right to effective political participation of minority groups.

#### 4. The Right to Effective Political Participation in the Instruments of the European Union

At the EU level, there is no comprehensive legal framework for minority protection. However, there are certain tendencies for its development, which, although of general status, contain parts that are undoubtedly applicable in the context of minorities. Bruno de Witte and Eniko Horvath point out that the EU has taken over the standards for protection of minorities from different sources (CoE and OSCE) and only provides support in the relations with the countries who aspire to join the Union. However, they, as other authors, note that the EU is becoming more open towards the rights of the minorities.<sup>85</sup> Colin Williams clarifies the evolution of the debate regarding the relation between minorities and governance, but also, the self-presentation of the minorities as resented in table no. 1.

85 Schutter, Olivier De. Recognition of the Rights of Minorities and the EU Equal Opportunities Agenda. *European Anti-discrimination Law Review*, No.11. MPG and HEC, 2011. <<http://non-discrimination.net/content/media/Review%2011%20EN.pdf>>. Last accessed 15 April 2011.; Williams, Colin H. Let Freedom Reign: The Impress of EU Integration on Minority Survival, in Elisabeth Prügl and Thiel, Markus. (eds.). *Diversity in the European Union*, New York: Palgrave Macmillan, 2009: 188.

Table no.1: Evolution of the debates for minorities, governing in EU



From	To
Discrimination	Fight
Current equality	Normalization
Protection of certain language	Promotion of bi/multilingualism
"Nationalist" ideologies	Inclusive pluralism
Marginal dependency	Self-adequacy/self-governing
Minority special pleading	Equal possibilities
Language as a divisive issue	Language as integrator
Cultural justification	Socio-economic reasons
Preoccupation with education	Holistic approach
Para-public employment	Economic marketing
Deficit compensation	Structural planning
Reactive policy	Intentional development
Historical orientation	Orientation towards the future

Source: Williams, 2008 (179).<sup>86</sup>

The law of the Union has not adopted a definition of minority. However, in many instruments of EU, one of the leading and fundamental principles present in various fields is the principle of equal treatment. One of the basic provisions for protection of minorities can be seen in the Treaty on the Functioning of the EU, where Article 19 ensures undertaking measures for protection against discrimination on the grounds of gender, racial or ethnic origin, religion or belief, etc.<sup>87</sup> Based on this Article, in 2000 the racial equality directives<sup>88</sup> and the directives for equal treatment in employment<sup>89</sup> were developed.

86 Williams, Colin H. Let Freedom Reign: The Impress of EU Integration on Minority Survival, in Elisabeth Prügl and Thiel, Markus. (eds.). Diversity in the European Union, New York: Palgrave Macmillan, 2009: 188

87 Consolidated Version of the Treaty on the Functioning of the European Union, *Official Journal of the European Union*, C 83/47, 30.10.2010. < <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF>>. Last accessed 14 June 2011.

88 Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin. *EUR-Lex website*. < <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:EN:HTML>>. Last accessed 16 April 2011.

89 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. *EUR-Lex website*. < <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:EN:HTML>>. Last accessed 16 April 2011.

The Charter of Fundamental Rights of the EU prohibits discrimination on the grounds of membership to a national minority (Article 21), stressing the respect of the cultural, religious and linguistic diversity (Article 22). It entered into force in 2009 with the Treaty of Lisbon.<sup>90</sup> The Treaty includes, among the fundamental values of the EU, the respect for human dignity, freedom, democracy, equality, rule of law, also the rights of persons belonging to minorities (Article I-2), while under the grounds for discrimination, amongst others, ethnic origin, religion and belief and the membership to national minority groups (Article II-81).

In the EU, minority rights are directly treated and elaborated in context of the enlargement process through the Copenhagen criteria from 1993 (Chapter 7).<sup>91</sup> Namely, one of the basic criteria for EU membership is for the candidate-countries to ensure, among others, the protection of human rights and the respect and protection of minorities. The progress of the candidate countries in meeting the criteria is evaluated through the progress reports of the EC.

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90 Consolidated Version of the Treaty on the Functioning of the European Union, *Official Journal of the European Union*, C 83/47, 30.10.2010. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF>>. Last accessed 14 June 2011.

91 European Council, European Council in Copenhagen 21 - 22 June 1993, *Conclusions of the Presidency*, SN 180/1/93 REV 1, Copenhagen, 21-22 June 1993, <[http://ec.europa.eu/bulgaria/documents/abc/72921\\_en.pdf](http://ec.europa.eu/bulgaria/documents/abc/72921_en.pdf)> Last accessed 15 May 2011.



Research

Research Design:  
Methodological Tools and Sample

methodological  
tools and  
sample

The research uses combined methods of reviewing the existing literature (document analysis), as well as field-based empirical research.

## A. Document Analysis

In line with the research question related to the legal environment in the context of the rights of minorities, their setup and the possibilities of their realization at the central and local level, the desktop research for theoretical analysis of documents was based on a structured selection of documents that included:

- Legal and political documents – laws, bylaws, strategies, international documents, and political documents (Ohrid Framework Agreement, programs of political parties);
- Analyses and academic papers from domestic and foreign academic and research institutions - documents and papers elaborated according to the standardized academic methodology of scientific value, and
- Documents and reports from international organizations and domestic and foreign research institutions (so-called grey literature).

In the document analysis, the following aspects of the issue of minority rights in Macedonia have been taken into consideration:

- Individual/group rights;
- Post-conflict society and minority rights;
- Separation of power and inter-ethnic relations management;
- Proportional representation and participation;
- Right to an effective political participation.

## B. Field Research

In the field research undertaken at central and local level, the method of semi-structured interviews has been used. The interview is a dialog, ‘a conversation with a purpose’ and as such there is room for reflection, introspection and in-depth discussions.<sup>92</sup> The method of semi-structured interviews was selected with a purpose of allowing the respondents to develop and lead the discussion, but also to provide direction of the con-

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<sup>92</sup> Erlandson, D., Harris, E., Skipper, B., & Allen, S. *Doing Naturalistic Inquiry*. London: SAGE Publications, 1993.

versation. The questions and the ideas that resulted from the initial interviews were used for conducting the subsequent interviews. Thus, although a detailed guide for the interviews was prepared, this guide was used only to provide idea for what kind of questions can be asked and what fields of interest can be the subject to conversation. Several guides for interviews were prepared that were used depending on the group of respondents, including:

- **Respondents at the central level:**
  - Academic community;
  - State institutions, agencies and bodies;
  - Associations with activities on the whole territory of the country.
- **Respondents at the local level:**
  - Units of local self-government
  - Associations with activities on the level of a municipality.

All guides had the same main framework, and they were differentiated only in the details and the direction in which a particular topic was developed. The content of the guides was prepared on the basis of the existing body of literature, knowledge and experience of the research team, as well as on the basis of the previous discussions of/with main respondents. For the respondents at the central level a specific approach of semi-structured interview was used, i.e. elite interviewing. Elite interviewing is a qualitative method of interviewing political and social elites in a given context, where it is significant to obtain information around the fact what certain group (in this case the elites) think about or how it interprets certain events/series of events or activities they have undertaken by themselves or they plan to work on/undertake.<sup>93</sup> The interpretation of the elites of certain events is necessary in order to understand the preferred choices of applied policies in related to the research question. The problematic aspects of this approach, related to the validity and reliability of the results were resolved through the approach proposed by Barry to use several sources and probing questions.<sup>94</sup>

## 1. Sampling

Qualitative research rarely demands a strictly elaborated sample size;<sup>95</sup> hence, for the qualitative part of the research the team faced difficulties in determining the number of interviews to be realized. A theoretic saturation was used as criteria for defining the sample size when “there were no additional data from which [...] the researcher would be convinced that the category is saturated”.<sup>96</sup> Although these criteria have been originally developed and used in

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93 Aberbach, J.D., & Rockman, B.A. Conducting and Coding Elite Interviews. *Political Science and Politics*, 35(4), December, 2002: 673 – 676.

94 Berry J.M. Validity and Reliability Issues in Elite Interviewing. *Political Science and Politics* 35(4), 2002: 679-82.

95 Sandelowski, M., Sample Size in Qualitative Research. *Research in Nursing and Health*, 18, 1995: 179-183.

96 Glaser, B. and A. Strauss. *The discovery of grounded theory: Strategies for qualitative research*. New York: Aldine Publishing Company, 1967.

theory development,<sup>97</sup> it has become a golden standard by which a purposive sample size is determined.<sup>98</sup>

**Central level** – for the purposes of this research, the central level represents the level of authority (legislative and central executive authority), as well as representation of institutions at national level or institutions that in their mandate or mission have national coverage (universities, associations operating at national level, Ombudsperson, etc.). 18 interviews were scheduled at central level, and (due to cancellations) 13 interviews were realized (the Annex to this report provides full info on the interviewees). The main criteria for selection of the respondents at the central level were 1) expertise/proficiency in the field - academic institutions, associations and 2) professional proficiency in the field - representatives of institutions from the central authority and the international community. At central level, the specific approach of elite interviewing was used, as described in details in the theoretical framework of the research.

**Local level** – at local level interviews were realized with representatives of the municipalities and associations that are registered and active on the territory of the selected municipalities. Besides the principle of sample saturation, on local level the principle of representativeness was also applied; out of the 84 municipalities, the field research was implemented in 14 (16.67% of the total number of municipalities), with total population of 502,299 citizens (28.3% of the total population in Macedonia).<sup>99</sup>

## 2. Sampling Criteria

The criteria applied for selection of municipalities is elaborated bellow.

Bearing in mind the numerical representation of the minorities and the fact that in few of the municipalities and in very few places the small(er) ethnic communities exceed 20% of the total population (which represents a threshold introduced by the OFA as a criterion for guaranteed enjoyment of some of the rights) the research team decided that the most realistic way of researching the influence of the OFA would be if the selected municipalities meet this criterion. Further, since the law provides the opportunity for the municipalities where the communities are under 20% to be able to exercise given rights in the same manner as if above 20%, the methodological approach of the team was to distribute the percentage range from 0.01% to 20% into three sub-groups and to see whether there are differences in using this legal possibility depending on where on the scale from 0.01% to 20% the numerical representation of the community is.

97 Glaser, B. and A. Strauss. *The discovery of grounded theory: Strategies for qualitative research*. New York: Aldine Publishing Company, 1967.

98 Guest, G. Bunce, A., Johnson, L. How Many Interviews Are Enough?: An Experiment with Data Saturation and Variability. *Field Methods* 18(1), 2006: 59-82.

99 For details on the ethnic affiliation of the sample please see the Annex on Methodology.

Table no. 2: Criteria for selection of municipalities for field research



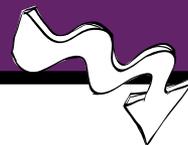
Criterion	Description	Confirmation of the representativeness
1. Ethnic representation under 20%	Municipalities in which the small ethnic communities (Turks, Serbs, Roma, Vlachs, Bosniaks, other) are represented with less than 20% (according to the census from 2002)	All 14 selected municipalities
2. Numerical representation	Percentage representation of the small ethnic communities (Turks, Serbs, Roma, Vlachs, Bosniaks, other) up to the threshold of 20% (according to the census from 2002): a) up to 10% b) 10.01%-15% c) 15.01%-19.99%	a) six (6) municipalities b) three (3) municipalities c) five (5) municipalities
3. Geographic location	At least 1 but not more than 3 municipalities in each statistical/planning region	6 regions: 2 municipalities Pelagonija region: 1 Polog region: 1
4. Urban/rural	From 84 municipalities in Macedonia: Urban: 43 Rural: 41	Urban: 7 municipalities Rural: 7 municipalities
5. Multiethnic	a) presence of all communities b) absence of one or several communities	a) 7 municipalities b) 7 municipalities

As a result of the existing strategic documents for development of the local self-government that envisage development and planning of the local self-government in the so called planning regions, the sample contains at least one but not more than three municipalities in each of these planning regions, which meets the condition for equal representation in the sample of all planning regions. The above-mentioned strategic documents, but also the concept of the process of decentralization in general, for the purpose of determining the measures for development of the local self-government, takes into consideration if the municipalities are urban or rural, which was an additional criterion for selecting the municipalities within each of the planning regions. The final criterion for fine-tuning the balance of the sample was the multi-ethnic character of the municipality, i.e. the presence of all communities, or the absence of one or more communities, according to the data for the population from the last census held in 2002.

### 3. The Sample

In accordance to the above elaborated methodological tools for sampling, the final study sample was decided upon.

Table no. 3: Municipalities included in the research



Municipality	Criterion							
	1	2			3	4	5	
		a	b	c			a	b
Struga	X	X			Southwest	Urban	X	
Ohrid	X	X			Southwest	Urban	X	
Radovish	X		X		Southeast	Urban		X
Konche	X		X		Southeast	Rural		X
Dolneni	X			X	Pelagonija	Rural		X
Shtip	X	X			East	Urban	X	
Karbinci	X			X	East	Rural		X
Kumanovo	X	X			Northeast	Urban	X	
Staro Nagorichane	X			X	Northeast	Rural		X
Chair	X	X			Skopje	Urban	X	
Studenichani	X			X	Skopje	Rural		X
Chashka	X	X			Vardar	Rural		X
Gradsko	X		X		Vardar	Rural		X
Gostivar	X			X	Polog	Urban	X	

The methodological tables with detailed description of the sample (criteria, list of respondents and institutions, etc.) are given in Annex I of this Study.

#### 4. Interviewing and Data Analysis

The field research (interviews at central and local level) was implemented in the period between 14 February and 15 April 2011. A total of 80 interviews were conducted (13 at central and 67 at local level). The list of respondents on central and local level is given in Annex I of this Study.

The duration of each interview was 30 to 40 minutes. Bearing in mind the fact that giving respondents the opportunity to choose the place for the interview contributes positively on their engagement and participation in the conversation for the research, all respondents were asked to choose a location for the interview that they prefer.<sup>100,101</sup>

All interviews were carried out in Macedonian language, as the mother tongue of the majority of researchers involved in the field research, but also of the majority of the respondents, for the purpose of yielding richer data. All interviews were audio-recorded with prior consent of the respondents, and later transcribed verbatim for additional analysis.<sup>102</sup> All interviews are quoted using automatically generated codes, with exception to the respondents who insisted to be quoted in full.

### C. Definitions and Delimitations

*Others* (in ethnic context): ethnic communities not mentioned in the Preamble of the Constitution. Some of them are: Montenegrins, Croats, Muslims,<sup>103</sup> Slovenes, while the Egyptians and the Torbesh (Muslim Slavs) are fighting to be acknowledged as special ethnic communities in the Constitution.<sup>104</sup>

*Implementation of OFA*: implementation of the constitutional and legal amendments resulting from the signing of the OFA.

*Minority group / Minorities*: the term minorities is being used according to the definition of Capotorti: “A group numerically inferior to the rest of the population, in a non-dominant po

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100 Gallagher, M., *Top Tips for Research and Consultation with Children and Young People*. Centre for research on families and relationships, University of Edinburgh, 2005, <<http://www.crfr.ac.uk/cpd/listeningtochildren/materials.html>> Last accessed 01 September 2009.

101 Mauthner, M. Methodological Aspects of Collecting Data from Children: Lessons from Three Research Projects”, *Children and Society*, 11, 1997:16-28.

102 Only the respondents from the ICRC from the municipality of Struga were an exception, as they requested the interviews not to be recorded. For the purpose, hand notes were used.

103 Parliament of the Republic of Macedonia. Minutes of the 63<sup>rd</sup> Session of the Parliament. 24 June 1993. [Собрание на Република Македонија. „Стенографски белешки од Првото продолжение на Шеесет и третата седница на Собранието на Република Македонија“ 24.06.1993.] <<http://www.sobranie.mk/WBStorage/Files/63sednica1prod24juni93god.pdf>>. Last accessed 10 october 2011.

104 *Torbes Community Requests Constitutional Recognition*. Radio Free Europe. [Torbesite baraat zapisuvanje vo Ustavot, radio program, Radio Slobodna Evropa], 11 January 2011, <<http://www.makdenes.org/content/article/2273316.html>>. Last Accessed 18 April 2011.

sition, consisting of nationals of the State, possessing distinct ethnic, religious or linguistic characteristics and showing a sense of solidarity aimed at preserving those characteristics“.<sup>105</sup>

*Small(er) ethnic communities*: ethnic communities that constitute fewer than 20% of the total population on the territory of the state. The introduction provides an overview of which these communities are.

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105 Capotorti, Francesco 1979. *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*. New York: UN Publications.

The Right to Effective Political Participation of the Small(er) Ethnic Communities in Local Self-Government in Macedonia

The Right to Effective Political Participation of the Small(er) Ethnic Communities in Local Self-Government in Macedonia

in Macedonia

“Where the issues-related policies are replaced by identity-related policies, some groups may suffer from exclusion accompanied with structural discrimination”<sup>106</sup>

Marc Weller

## A. The Right to Effective Political Participation in the Light of Participation in Local Self-Government

The effective political participation, particularly in post-conflict societies with a multi-ethnic composition, proved to be an important factor of stability many times in the past. Opposite to the scholars who claim that the (ethnic) diversity increases the risk of ethnic conflicts, and bearing in mind the roots of the ethnic conflicts, the literature shows that ethnic diversity cannot be taken as source of ethnic conflicts, but that it is rather the exclusion from the processes of decision-making and the limiting of access to power. In this sense, the exclusion does not denote the exclusion from access to resources such as housing or employment, but exclusion from the control over state power and public goods and services.<sup>107</sup>

Although there is no concrete definition of what participation represents, the Human Rights Committee General Comment no. 25 from 1996, can be taken as the basis: „The conduct of public affairs [...] relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.“<sup>108</sup> Accordingly, right to participation refers to all public and political spheres – elections, voting and running for office, legislation, decision-making processes, participation in advisory bodies, etc., without discrimination, as manner of preserving,

<sup>106</sup> Weller, Marc. Effective political participation of minorities in public life. in Marc Weller (ed.). *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*. Oxford: Oxford University Press, 2007: 477

<sup>107</sup> Wimmer, Andreas, Lars-Erik Cederman and Brian Min. Ethnic Diversity, Political Exclusion and Armed Conflict: a Quantitative Analysis of a Global Dataset. in Marc Weller and Nobbs, Katherine. (eds.). *Political Participation of Minorities - A Commentary on International Standards and Practice*. Oxford: Oxford University Press, 2010: 3-34.

<sup>108</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)*, *The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, <<http://www.unhcr.org/refworld/docid/453883fc22.html>>. Last accessed 10 October 2011.

protecting and promoting minority identity.<sup>109</sup> This undoubtedly results from the basic standards prescribed by the instruments of the international and regional organizations, as given above. The final conclusion one can make is that for realization of the right to political participation, the focus should be on the electoral representation, i.e. participation of the minorities in the elected bodies at national and local level (reserved seats in the parliament, political parties in affiliation to minorities, right to participation in parliamentary commissions, committees and other bodies, management positions in certain bodies and etc.); representation in advisory bodies (as special bodies or part of particular bodies, for example certain ministries that for the issues of interest to the minorities could be efficient mechanisms); representation in the executive (on higher ministerial or managerial positions, the administration, as well as in some sectors dealing with sensitive issues: police, justice, etc.); and in the case of decentralization of the state, it is desirable to set a clear differentiation of the responsibilities in relation to economic and fiscal issues, to set effective mechanisms for resolving conflicts between the central and local authorities, etc.<sup>110</sup>

From the theoretical framework presented in the study, one can easily define the preconditions for, and the elements (parts) of the right to effective political participation, which are important in order to elaborate the research question set forth here. Those are non-discrimination, equitable representation and access to information (as preconditions) and electoral system, decentralization and territorial organization, special procedures (veto), special bodies, and direct democracy. The research was focused on these preconditions and elements, and the right to effective political participation in the Republic of Macedonia will be reviewed in this context. It is important to once again reiterate the basic assumption in this study, which is that the minorities want to be included in the public life and in the processes of decision making that affect them (including the preparatory processes).

It is duly mentioned that three more preconditions, besides the above-mentioned, can be considered important for this topic: citizenship and socio-economic position, as well as the level of education of the minority groups. However, because of the focus of the study (determining the influence of the OFA), due to the threat of losing the coherence of the text, but also due to limited resources, the research does not explore these two aspects. Their exclusion from the study should not be considered as a sign of annulment of their importance in relation to the effective political participation of the small(er) ethnic communities. The allocation of adequate resources in the local authority is still an important precondition, but it will not be considered separately. Instead, it will be considered within the part concerned with the decentralization, for the purpose of avoiding repetition in, and overlap of, these two parts.

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109 Ghai, Yash. Public Participation and Minorities. Minority Rights Group International, 2003. *Website of the Minority Rights Group International*, <[www.minorityrights.org/download.php?id=112](http://www.minorityrights.org/download.php?id=112)>. Last accessed 16 June 2011.

110 Weller, Marc. Effective Political Participation of Minorities in Public Life. in Marc Weller (ed.). *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*. Oxford: Oxford University Press, 2007: 477-517.

## B. The Right to Effective Political Participation in Macedonia

Since the independence, there is a tendency to create an idyllic depiction of minority rights in Macedonia.<sup>111</sup> Although in the Macedonian political-legal discourse the terms “minority” and “minority rights” are not widely accepted, such viewpoints for the respect of minority rights have not been abandoned even in some articles published during the 2001 conflict.<sup>112</sup> Positive representation of the state of affairs in minority protection is part of the first state report on the FCNM (2003), according to which Macedonia is a country with highest level of application of the international and European standards for protection and promotion of minority rights, founded on deeply rooted tolerance. The positive representations are disputed less by local and more by foreign researchers,<sup>113</sup> while the majority of the analysis of minority rights in Macedonia before 2001 paid little attention to the rights of the small(er) ethnic communities.

According to respondents from the academic community, at the normative level, Macedonia has high standards for the protection of minority rights and a well-developed institutional system for their protection,<sup>114</sup> particularly with the amendments to the Constitution in 2001,<sup>115</sup> although some highlight the fact that the standards after 2001 are the result of a necessity caused by the conflict,<sup>116</sup> and that not all ethnic groups are treated equally.<sup>117</sup> The relation between the implementation of the international standards for the rights of minorities and the EU integration process of Macedonia is also indicated through the so-called Copenhagen Criteria.<sup>118</sup>

In view of the small(er) ethnic communities, Frchkoski points out that they might be in an inferior position between the Macedonian majority and the Albanian minority community.

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111 For example, see the expositions of Dosta Dimovska, Vladimir Golubovski during the 28<sup>th</sup> session of the Parliament held 19<sup>th</sup> of December, 1991. Parliament of the Republic of Macedonia. *Minutes of the 28<sup>th</sup> Session of the Parliament*. 19 December 1991. [Собрание на Република Македонија. *Стенографски белешки од Првото продолжение на Шесетт и третата седница на Собранието на Република Македонија*. 19.12.1991.] <<http://www.sobranie.mk/WBStorage/Files/28sed19dek91god.pdf>>. Last accessed 10 October 2011.

112 For example, see: Ortakovski, Vladimir. Interethnic Relations and Minorities in the Republic of Macedonia, *Southeast European Politics*, Vol. 2, No. 1. <<http://www.seep.ceu.hu/issue21/ortakovski.pdf>>. Last accessed 16 June 2011.; Milosavleski, Slavko, Minorities in Macedonia in the Political and Constitutional Acts: from the 1903 Krushevo Manifest to the 2001 Constitutional Amendments, *New Balkan Politics*, 7/8, <<http://www.newbalkanpolitics.org.mk/napis.asp?id=15&lang=English>>. Last accessed 16 June 2011.

113 For example, see: Brunnbauer, Ulf, The Implementation of the Ohrid Agreement: Ethnic Macedonian Resentments, *JEMIE*, Issue 1/2002. <<http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2002/nr1/Focus1-2002Brunnbauer.pdf>>. Last accessed 14 June 2011.

114 Interview No. 5 with Aleksandra Bojadzieva, Skopje, February, 2011.

115 Interview No. 8, Skopje, February, 2011.; Interview No. 1, Skopje, February, 2011.; Interview No. 5, Skopje, February, 2011.

116 Interview No. 1, Skopje, February, 2011.

117 Interview No. 5 with Aleksandra Bojadzieva, Skopje, February, 2011.

118 Interview No. 8 with university professor, Skopje, February, 2011.; Interview No. 1, Skopje, February, 2011.; Interview No. 5 with Aleksandra Bojadzieva, Skopje, February, 2011.

However, stating that the OFA itself contains principles that refer to the rights of all citizens, including the rights of the small(er) ethnic communities, he concludes that the OFA offers a civic framework for the adoption of fair decisions that include – and not exclude – minorities. For Maleska, it is doubtless that the formulation of 20% has an influence by limiting the rights of the small(er) ethnic communities<sup>119</sup> - a viewpoint shared by Bojadzieva,<sup>120</sup> an expert at the Advisory committee on the FCNM. According to her, OFA largely contributed to the higher promotion of the rights of the small(er) ethnic communities, however the non-inclusion of the small(er) ethnic communities in its negotiations presents a problem.

According to the state administration respondents and the members of the academic community, the protection and promotion of the rights of the minorities in Macedonia is at a high level, compared to the other neighbouring countries.<sup>121</sup> Further, the signing of the OFA is considered a significant step for the promotion and protection of minority rights.<sup>122</sup> Despite the positive criticism for the legislation,<sup>123</sup> the implementation itself is characterized as problematic,<sup>124</sup> while the allocation of insufficient financial resources is seen as the biggest problem and it is the most often cited criticism.<sup>125</sup>

Similarly, the majority of the respondents from the NGO sector find Macedonia to be a country with relatively high standards in comparison to the other countries of the region. However, some respondents note that “Macedonia meets the international standards to a small extent”.<sup>126</sup> In view of the implementation – the respondents are unanimous that the practical application of the standards is not good,<sup>127</sup> and some point to the differences in the implementation depending on the ethnic affiliation. When discussing the local level, the respondents often point out that the implementation of the rights of minorities also failed.<sup>128</sup> An explicit resistance<sup>129</sup> upon mentioning the rights of minorities exists with part of the employees in municipal administrations.<sup>130</sup> Such resistance also exists with some of the respondents from the civil society sector,<sup>131</sup> where some argue that although the minority issues are important, employment is the most important.<sup>132</sup> Overt resistance to the usage

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119 Interview No. 1, Skopje, February, 2011.

120 Interview No. 5 with Aleksandra Bojadzieva, Skopje, February, 2011.

121 Interview No. 2, Skopje, February, 2011.

122 Interview No. 62, Skopje; Interview No. 2, Skopje, February, 2011.

123 Interview No. 10, Skopje, February, 2011.

124 Interview No. 3-a, Skopje, February, 2011.; Interview No. 3-b, Skopje, February, 2011.

125 Interview No. 10, Skopje, February, 2011.

126 Interview No. 6, Skopje, February, 2011.

127 Interview No. 6, Skopje, February, 2011.

128 Interview No. 7, Skopje, February, 2011.

129 Interview No. 55, Studenichani.

130 Interview No. 28, Kumanovo.

131 Interview No. 46, Ohrid.

132 Interview No. 68, Gostivar.

of the term ‘minority’ exists with part of the respondents-ethnic Albanians, who are on high positions in some municipalities.<sup>133</sup>

While commenting on the benefits of the OFA for the small(er) ethnic communities, the majority of civil society representatives claim that the signing of the OFA does not significantly improve the condition of the small(er) ethnic communities,<sup>134</sup> while some qualify them as the losers in the whole story.<sup>135</sup> Furthermore, representatives of the civil society sector made remarks on the nature of the OFA (in that context, the most frequent characteristic would be the bi-national agreement,<sup>136</sup> i.e. agreement that promotes a bi-national state,<sup>137</sup> or agreement between the Macedonians and the Albanians<sup>138</sup>),<sup>139</sup> the threshold of 20%, its unequal implementation [in relation to the segments it regulates and in relation to the municipalities in which it is (not) implemented],<sup>140</sup> strongly emphasizing one community while neglecting the small(er) ethnic communities,<sup>141</sup> etc. However, some of the benefits of OFA for the small(er) ethnic communities are also mentioned, like the increase in the number of representatives at the central and local level,<sup>142</sup> the increase in the number of employees in the public sector,<sup>143</sup> and also specific benefits for one group (for example, the shift from the traditional employments of the Roma in the public sector – employment in the administration sector instead of being employed as janitors<sup>144</sup>).

In relation to the implementation of the OFA, several authors point out its positive influence on the relations between the two largest ethnic groups in Macedonia – the ethnic Macedonians and the Albanians, as well as the contribution of OFA for the future of Macedonia as multi-ethnic society.<sup>145</sup> According to Ordanoski and Matovski, the key contribution of the

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133 Interview No. 70-a, municipality of Chair.

134 Interview No. 9, Skopje, February, 2011.; Interview No. 7, Skopje, February, 2011.

135 Interview No. 6, Skopje, February, 2011.

136 Interview No. 67, Gostivar.; Interview No. 12-b, Struga, March, 2011.; Interview No. 15, Struga, March, 2011.

137 Interview No. 46, Ohrid.

138 Interview No. 12-c, Struga, March, 2011.

139 It has to be mentioned that in some municipalities, the bi-nationalism as promoted by the OFA is not perceived negatively by ethnic Albanian representatives – example: President of the Council of the municipality of Chair.

140 Interview No. 24, March, 2011.

141 Interview No. 13, Struga, March, 2011.; Interview No. 26-b, Kumanovo, March, 2011.

142 Interview No. 17, Radovish, March, 2011.

143 Interview No. 37, Dolneni.

144 Birdjan Mehmedov, Association for Roma Rights, Shtip.

145 For example, see: Atanasov, Petar. The Impact of the Ohrid Agreement on the Macedonian Future, *National Defence Academy and Bureau for Security Policy // PfP Consortium of Defence Academies and Security Studies Institutes*, September 1, 2006. <[http://www.humansecuritygateway.info/documents/NDABSP\\_Macedonia\\_Impact\\_OhridAgreement.pdf](http://www.humansecuritygateway.info/documents/NDABSP_Macedonia_Impact_OhridAgreement.pdf)>. Last accessed 14 June 2011.

OFA should not be sought at the legislative level, but at the level of policies, namely in (the key) two of the four basic policies –decentralization and equitable representation.<sup>146</sup>

With regard to what exactly effective political participation represents, the views of the respondents can be narrowed down to the presence in bodies where the actual decisions are being made.<sup>147</sup> Bojadzieva rightfully complements this with the importance of the moment of participation in the decision-making processes that affect the minorities.<sup>148</sup> Regarding the obstacles for effective political participation of the small(er) ethnic communities at the local level, the most frequently mentioned ones are the lack of information and of motivation and Frchkoski adds to this the divisions on all grounds, including the ethnic division.

The chapter reviews the findings of the research for the right to effective political participation of the small(er) ethnic communities at the local level, with the focus on the period before and after OFA. The review monitors the preconditions and the elements above in this chapter, through analysis and comparison (where the existence of data allows it) of the legal framework, the framework of policies, existing statistics as well as the perceptions of the respondents before and after the OFA.

## 1. Preconditions

As the introduction of the section clarifies, in order effective political participation of the small(er) communities to be ensured, certain preconditions are necessary to be met, including non-discrimination, equitable representation and access to information. Again, one should take into consideration the basic assumption of the study that the minority communities wish to be included in the political processes and that the degree of their education and professional vocation enables such inclusion.

### a. Non-Discrimination

The political elites in Macedonia have been neglecting the provision of the conditions and the actions towards the application of the principle of equality for a long time. Only the civil society sector called upon the importance of the compact legislative framework for protection against discrimination, thus initiating a discussion on this subject. Taking this into consideration, the fact that the discussion with focus on the protection against discrimination is still dominating is not surprising, while other important aspects of the actions (prevention through education, raising awareness, etc.) are neglected.<sup>149</sup>

The framework for protection against discrimination in Macedonia is confirmed by the Constitution and the laws, while the signing of the OFA does not bring significant changes in this area. The Constitution contains a provision for the equality of citizens regardless of

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146 Ordanoski, Sašo and Aleksandar Matovski. Between Ohrid and Dayton: The Future of Macedonia's Framework Agreement, *Südosteuropa Mitteilungen*, 04/2007: 46-59.

147 Interview No. 8, Skopje, February, 2011. Interview No. 1, Skopje, February, 2011.

148 Interview No. 5 with Aleksandra Bojadzieva, Skopje, February, 2011.

149 It should be mentioned that the CSOs are mainly the ones working in the field of education and raising awareness.

gender, race, colour of skin, national or social origin, political or religious belief, property or social status (Article 9). Additionally, it is important to stress that besides the fact that, according to the Constitution, the international documents are part of the domestic law and they have precedence over the domestic legislation, the court practice shows insignificant referrals or calling upon the international law during the ruling in cases. Also, the Constitution determines the limitation of freedoms and rights, delineating that it cannot be discriminatory on the grounds of gender, race, skin colour, national or social origin, political or religious belief, property or social status (Article 54).

The citizens can call upon this before the Constitutional Court for the protection of human rights and fundamental freedoms, including the protection against discrimination. However, according to the data, the use of this mechanism is insignificant, and the number of cases where the court found violation of the human rights and fundamental freedoms is even smaller. In 2010, 9 cases that were related to the protection of the rights and freedoms reached this court, all of which, but one, were rejected.

Apart from this mechanism, according to the Constitution, the Ombudsperson is also at disposal for protecting the constitutional and legislative rights of the citizens when they are violated by the organs of the state administration or by any other organ and organization with public authorizations (Article 77). The Law on Ombudsperson was adopted in 1997, but it does not focus sufficiently on the protection from discrimination and the protection of the minority rights.

The constitutional amendments adopted after the OFA do not elaborate on the Articles that relate directly to discrimination. The only amendment that enters this area is the amendment XI to Article 77. With this amendment, the Ombudsperson pays particular attention to the protection of the principles of non-discrimination and adequate and equitable representation of the members of communities in the state administration, the ULSG and the public institutions and services. The Ombudsperson is elected with a double/qualified majority, also known as *Badinter majority*.

This amendment also resulted with the adoption of a new Law on Ombudsperson in 2003, which altogether reflects the content of it. Thus, the law obliges the institution of the Ombudsperson to regulate the protection against discrimination, as well as to monitor the respect of the principle of adequate and equitable representation of the members of communities in the bodies of the state administration, the ULSG bodies and in the public institutions and services.<sup>150</sup> The annual reports of the Ombudsperson enlist a small (and even decreasing) number of complaints related to non-discrimination and adequate and equitable representation. Hence, in 2009 there were 20 complaints regarding non-discrimination and adequate and equitable representation (or 0.55% of all complaints received) and in 2010, only 16 (or 0.4% of all complaints received). According to this institution, the small number is a result of the lack of information, failure to recognize the forms of discrimination, as well as lack of

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<sup>150</sup> Law of the Ombudsman. *Official Gazette of the Republic of Macedonia no. 60/2003*. [Закон за народен правобранител. *Службен весник на Република Македонија*. бр.60/2003.].

trust in the institutions and lack of courage to report such cases. The Ombudsperson also notes that discrimination is registered mainly in the field of employment, i.e. above all, in respecting the principle of equitable representation.

The greatest change in the legal framework for protection against discrimination was done in 2010, with the adoption of the first special Law on the Prevention and Protection against Discrimination. Thus, the Law prohibits both direct and indirect discrimination, on the basis of any feature it may occur. Apart from the criticism and the insufficiencies of the law,<sup>151</sup> the majority of the representatives from the state institutions, but also from the civil sector, accepted the text as the first step towards building a solid foundation for protection against discrimination. With the law, the Commission for Protection against Discrimination was established, as the first body for equality in the country. The implementation of the anti-discrimination law started on 1<sup>st</sup> of January, 2011, however it is still early to expect groundbreaking results from its adoption. If looking into the initial claims filed to the body, most are for discrimination on the grounds of ethnic membership and party membership/affiliation in the field of employment.

Macedonia does not have a policy framework for non-discrimination and equality. Moreover, one can also feel the absence of strategic approach towards the promotion and protection of human rights in general. Apart from the obvious importance of having a National Action Plan for Human Rights (that would include non-discrimination) as a solid strategic document, there is still lack of discussion for adopting such a document; more so as the country has a developed system for protection of minorities including measures of affirmative action, which contain the fight against discrimination in their essence.

The field research on the perceptions of the respondents for non-discrimination show small differences from what the statistical data and the annual reports of the Ombudsperson point out. Most of the respondents – from the state institutions and the ULSG,<sup>152</sup> from civil society sector, the majority<sup>153</sup> and the minority communities<sup>154</sup> – pointed out that there is no discrimination in Macedonia and/or in their municipality. Some respondents consider exclusion most often as a result of inadequate qualifications and not of non-discrimination,<sup>155</sup> and some still hold the opinion that discrimination as an issue is enforced by the donors,<sup>156</sup> and not an actual problem in Macedonia. Most of the few who claimed that there is discrimination, related it with the discrimination of the Roma population.<sup>157</sup> The most frequently

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151 See: How Macedonia Can Keep Pace with European Standards for Prevention and Protection Against Discrimination. Centre for Regional Policy Research and Cooperation Studiorum. Skopje, April 2010. *CRPRC Studiorum Website*. <<http://studiorum.org.mk/en/?p=688>>. Last accessed 19 October 2010.

152 Interview No. 64, Staro Nagorichane.

153 Interview No. 28, Kumanovo; Interview No. 16, Radovish, March, 2011.; Interview No. 47, Gradsko.

154 Interview No. 38, Dolneni; Interview No. 50, Gradsko; Interview No. 55, Studenichani; Interview No. 35, Karbinci.

155 Interview No. 50, Gradsko; Interview No. 17, Radovish, March, 2011.

156 Interview No. 46, Ohrid.

157 Interview No. 25, Kumanovo, March, 2011.; Interview No. 64, municipality of Staro Nagorichane.

quoted grounds for discrimination by the respondents which claim there is, are ethnicity and party membership/affiliation.<sup>158</sup> According to the respondents, both direct and indirect discrimination are present, although they do not necessarily identify them as such. Again, direct discrimination is most often connected with the Roma population. On the other hand, indirect discrimination is frequently related to the threshold of 20%, which the majority of the respondents consider to be discriminatory.<sup>159</sup> But, some of the respondents identify other cases of indirect discrimination. The most notable is the case with the regulations regarding the implementation of the census of the population and households announced for the second half of 2011,<sup>160</sup> according to which the minimum degree of education for qualifying as an enumerator is four years of secondary education, which is discriminatory for the Roma because despite the fact that they often do not have completed secondary education, it is in most cases in the duration of three years.<sup>161</sup>

### **b. Proportional Representation**

Affirmative action is one of the most significant instruments for the fight against discrimination in general, and against the discrimination of minority groups in particular. Proportional representation, as one of the instruments of affirmative action, is implemented in Macedonia in full, after the OFA.

The provisions for equitable representation in Macedonia date before 2001 and the OFA, as certain laws adopted before the conflict in 2001 partially endorsed measures whose goals were to improve the representation of members of minorities. Hence, the Law on Local Self-government from 1995 contains a provision that can be considered as a precursor to the principle of adequate and equitable representation of the members of the communities that are not in majority. This provision does not endorse solid obligation for the ULSG, but rather a recommendation for the ULSG with mixed national composition during the selection, appointment and employment in their bodies to strive for providing adequate national representation without disrupting the principle of professional competence (Article 54, paragraph 5.). However, the statistical data shows that this was not taken into consideration at all. The Helsinki Committee for Human Rights (Helsinki Committee) in its 1999 Report on the rights of the minorities in Macedonia pointed out that only 15% of the employees in the public sector or in the public enterprises by ethnicity were not Macedonians (the percentage of the Albanians was 7%).<sup>162</sup>

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158 Interview No. 68, Gostivar.

159 Interview No. 61, Skopje.

160 Due to the early parliamentary elections, the census was postponed for October, 2011.

161 Interview No. 24 with representative from the civil society sector, March, 2011.

162 Helsinki Committee for Human Rights of the Republic of Macedonia. *Annual Report for Year 1999*, as quoted in: Bieber, Florian. *Power-Sharing and the Implementation of the Ohrid Framework Agreement*, in Friedrich-Ebert- Stiftung Skopje. (ed.), *Power-Sharing and the Implementation of the Ohrid Framework Agreement*, Friedrich-Ebert-Stiftung: Skopje, 2008. <[http://www.fes.org.mk/pdf/OFA\\_english.pdf](http://www.fes.org.mk/pdf/OFA_english.pdf)>. Last accessed 14 June 2011: 30.

Further, the constitutional amendments provide the legal possibility for increased participation of the members of the communities in the state administration on all levels, and are transposed through the provisions of equitable representation in several laws and strategic documents, adopted after 2001. The principle refers to the organs of the state administration and other public institutions on all levels, and includes also the members of the small(er) ethnic communities. In the focus of this study is the local level, and since the employees in the ULSG are civil servants, the principle of proportional representation refers to them as well.

The new Law on Local Self-Government adopted after the OFA in 2002 endorses the obligation for representation of the communities in the employment in the municipal administration and in the public enterprises that are founded by the municipality. This imposes the obligation for adequate and equitable representation of the citizens who belong to all communities represented in the municipality on all levels, but also for respecting the criteria for expertise and professional competence during employment. At the local level, the mayors are responsible for employment in the ULSG and therefore they have the responsibility to ensure that the principle of adequate and equitable representation is fulfilled. Another organ at the local level competent for practical implementation of this principle is the Council, whose authority lies in adopting decisions and rules on the promotion of this principle.

The main institutions at the state level with authority to perform strategic planning, implementation and monitoring of the implementation of this principle in the state organs, institutions and in the ULSG, are the Secretariat for Implementation of the Ohrid Framework Agreement (SIOFA) and the Ombudsperson.

SIOFA has the key position in the planning and implementation of the principle of equitable representation, and one of its most significant documents is the Strategy on Adequate and Equitable Representation of the Non-Majority Communities in Macedonia from 2007. According to this document, the principle of adequate and equitable representation refers to the ratio between the ethnic structures in the Republic of Macedonia, on one hand, and the employment in the state organs on the other, and it is clearly pointed that the adequate and equitable representation applies to all communities in the Republic of Macedonia.<sup>163</sup> The long-term goal envisaged with this strategy is “achieving the total number of employees in the ministries, regional units of the ministries and in the municipalities pursuant to the results from the census.”<sup>164</sup>

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163 Secretariat for the Implementation of the Ohrid Framework Agreement, Government of the Republic of Macedonia. *Strategy on Equitable Representation of the Non-majority Ethnic Communities in Public Administration and Public Enterprises in the Republic of Macedonia*. [Секретаријат за спроведување на рамковниот договор, Влада на РМ. *Стратегија за соодветна и правична застапеност на припадниците на заедниците кои не се мнозинство во Република Македонија*, 2007].

164 Secretariat for the Implementation of the Ohrid Framework Agreement, Government of the Republic of Macedonia. *Strategy on Equitable Representation of the Non-majority Ethnic Communities in Public Administration and Public Enterprises in the Republic of Macedonia*. [Секретаријат за спроведување на рамковниот договор, Влада на РМ. *Стратегија за соодветна и правична застапеност на припадниците на заедниците кои не се мнозинство во Република Македонија*, 2007].

The strategy contains measures and activities for adequate and equitable representation in the state administration for civil servants (employed in the education and science sector, in the health and social protection and in culture), in the public enterprises and in the ULSG, emphasizing the role of the organs of the municipality – the mayor and the council – for the principle of equitable representation. According to it, one of the main instruments envisaged for achieving the adequate and equitable representation at the local level is introducing a policy for bilingualism, according to which there are reserved employment possibilities for bilingual candidates, depending on the status of the languages and the structure of the population in a given municipality. The number of reserved jobs depends on the proportional structure of the population in the municipality, and the details are determined through recommendations for the municipalities. According to the recommendations, the bilingualism, as an additional criterion for recruitment and employment, should be applied in cases of vacancies as a result of persons who have retired or left the service for any other reasons, i.e. in case of new employments, not including the ones who are already employed. The main criticism directed at SIOFA related to the implementation of the principle of equitable representation is the inconsistency of this principle in the Secretariat itself.<sup>165</sup> The data for 2008 shows that quite a large percentage of the employees via the public notices of SIOFA goes to the Albanians – 92.24%, as opposed to 7.76% employees being members of the small(er) ethnic communities (the percentage of the employed Macedonians is 0%).<sup>166</sup> Hence, for example, in 2009, 90.2% of the employees in the Secretariat are Albanians, while this number in 2010 is 87.5%.<sup>167</sup> The high representatives of SIOFA, in their presentation before the Inter-Community Relations Committee, reveal that in the following public notices the number of Turks and Roma will be higher due to the actual need for increasing the representation of the members of the Turkish and Roma ethnic communities in the state administration, but at the same time they emphasize the lack of highly educated personnel as a problem with which they face with regards to the employment of Roma.<sup>168</sup>

165 Please see statement of Kenan Hasipi, Commission for Inter-Ethnic Relations. Parliament of the Republic of Macedonia. Minutes, 18 November 2009. [Комитет за односи меѓу заедниците, Собрание на Република Македонија. *Сџенографски белешки од Седницата на Комитетот за односи меѓу заедниците*, 18.11.2009 година.].

166 Secretariat for the Implementation of the Ohrid Framework Agreement, Government of the Republic of Macedonia. *Operational Programme for Improvement of Equitable Representation of Members of Non-majority Communities in Public Administration and Public Enterprises*. [Секретаријат за спроведување на рамковниот договор, Влада на РМ. *Програма за вработување на припадниците на заедниците за 2009 година*. Скопје, 2008. <<http://siofa.gov.mk/mk/index.php?news=135>>].

167 Ombudsman of the Republic of Macedonia. *2009 Annual Report of the Ombudsman of the Republic of Macedonia*. Скопје, 2010. [Народен правобранител на Република Македонија. *Годишен извештај за работата на народниот правобранител за 2009*. Скопје, 2010.]; and Ombudsman of the Republic of Macedonia. *2010 Annual Report of the Ombudsman of the Republic of Macedonia*. Скопје, 2011. [Народен правобранител на Република Македонија. *Годишен извештај за работата на народниот правобранител за 2010*. Скопје, 2011.].

168 Commission for Inter-Ethnic Relations. Parliament of the Republic of Macedonia. Minutes, 30 October 2009. [Комитет за односи меѓу заедниците, Собрание на Република Македонија. *Сџенографски белешки од Седницата на Комитетот за односи меѓу заедниците*, 30.10.2009 година.].

The Ombudsperson is the other institution that monitors the application of the principle of proportional representation. The institution, on one hand, notes progress in relation to the respect of the principle in recruitment of the members of minorities, but on the other, it notes that this does not refer to the members of the small(er) ethnic communities; it refers even less to the employment of members of these communities on higher (managerial) positions. The annual report of the Ombudsperson for 2010 informs that in the employment of the units of local self-government, the principle of equitable representation is not always respected (see Annex II: Table – equitable representation per municipality). This institution points that “the existing system for implementation of the principle of adequate and equitable representation does not provide essential influence in the application of this affirmative principle [and that it] is not being applied consistently regarding the managerial positions.”<sup>169</sup> According to the recommendations in the report, “the application of the principle of adequate and equitable representation can have an effect only if it includes all communities, i.e. if there is a balance of the interests of all ethnic communities.”<sup>170</sup> According to this, the conclusion is that the necessary level of representation is still not achieved, particularly when members of the small(er) ethnic communities are in question, although there is certain progress in the implementation of the principle of adequate and equitable representation.<sup>171</sup> The report appeals to the competent institutions to undertake more active efforts for the implementation of the constitutional principle of adequate and equitable representation, particularly with the small(er) ethnic communities, but also to strengthen the legal regulation with instruments that will contribute towards more successful implementation of this principle.<sup>172</sup> Here, the public enterprises are mentioned separately, thus leading to a conclusion that they did not respect the principle in the past few years.<sup>173</sup>

Regarding equitable representation (but also the usage of languages and decentralization), ECRI points out that the manner in which OFA is implemented “could have short-term and long-term consequences upon the structure of relations between the communities, upon the possibilities for constructive contacts and upon everyday life in the country.” This is the reason for which ECRI recommends “to enable the implementation in a manner that includes all ethnic communities [...] and the small(er) ethnic minorities on equal basis”. Also, the Helsinki Committee points to “neglecting the small(er) ethnic communities” during the application of the principle of equitable representation, as well as disputing the principles

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169 Ombudsman of the Republic of Macedonia. *2010 Annual Report of the Ombudsman of the Republic of Macedonia*. Скопје, 2011. [Народен правобранител на Република Македонија. *Годишен извештај за работата на народниот правобраниител за 2010*. Скопје, 2011.].

170 *Ibid.*

171 *Ibid.*

172 For more details, see: *Ibid.*

173 *Ibid.*

of competence and expertise in the structuring of the state organs and the public administration.<sup>174</sup>

Nevertheless, the field research came to the conclusion that the measures for proportional representation in almost all municipalities are not being accepted as measures for the fight against discrimination. Namely, there are several municipalities where the respondents dispute the importance and the existence of (ethnic) discrimination on one hand, while they emphasize the dissatisfaction from the unjust representation of the members of the ethnic community in the organs and in the administration in the given ULSG and in the public enterprises, on the other.

According to a smaller number of respondents, OFA is being respected in the part of equitable representation,<sup>175</sup> and/or there is progress in the application of this principle in the organs of the ULSG, the state administration and public enterprises.<sup>176</sup> The majority of the respondents remark on the inconsistency of application of this principle and they provide concrete observations on the principle itself and on its application.<sup>177</sup> The most frequent remark is on the exclusion of the application of this principle for the small(er) ethnic communities,<sup>178</sup> followed by the quality of the persons who are not employed.<sup>179</sup> Some respondents emphasize that the manner on which SIOFA implements this principle does not provide positive effects,<sup>180</sup> pointing out that the SIOFA does not respect the equitable representation for its own employments.<sup>181</sup> Another negative point of the implementation that is pointed out by the respondents is the political bargaining and/or the employments on the basis of party criteria,<sup>182</sup> not only at the central, but also at the local level.<sup>183</sup> Still, some state the unfavourable financial situation as the key reason for the failure to respect the principle, and not the lack of political will or agreement around the need of applying the principle of proportional representation (the comparative analysis of the interviews with the respondents from the ULSG in several municipalities with those from the NGO sector points to the same conclusion).<sup>184</sup> In summary, the majority of the respondents from most of the municipalities

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174 Helsinki Committee for Human Rights of the Republic of Macedonia. *Annual Report for Year 2004*. [Хелсиншки комитет за човекови права во Република Македонија. *Годишен извештај за состојбата со човековите права во РМ, 2004*. Скопје, 2005.]. <<http://www.mhc.org.mk/default-en.asp?ItemID=39D6C1716BD9B34FB982EB240A7D3B23>>. Last accessed 30 June 2011.

175 Interview No. 37, municipality of Dolneni.

176 Interview No. 21, Shtip, March, 2011.

177 Interview No. 45, Ohrid.

178 Interview No. 26-b, Kumanovo, March, 2011.

179 Interview No. 26-a, Kumanovo, March, 2011.; Interview No. 42, Ohrid.

180 Interview No. 68, Gostivar.

181 Interview No. 67, Gostivar.

182 Interview No. 46, Ohrid.

183 Interview No. 68, Gostivar.

184 Interview No. 32, Konche.

provided specific remarks in relation to the equitable representation.<sup>185</sup> It is important to emphasize that Staro Nagorichane separated itself as municipality where the respondents have remarks on exceeded representation of the members of the Serbian community, which is numerically a smaller group.<sup>186</sup>

### c. Access to Information: Use of Minority Languages

In the period before the 2001, the Law on Local Self – Government from 1995 envisaged “the names of populated areas, the signs of public services and institutions, the signs of public companies and other public signs” to be written also “in the language and alphabet of the minority<sup>187</sup> that is in considerable number [above 20% local community], if it is so decided by the Council of the unit of local self-government,” but this has been annulled by the Constitutional Court with the explanation that the official use of languages is in the competence of the legislative authority and as such it may not be delegated to the Council.<sup>188</sup> The same law provides for unhindered usage of the language and alphabet of the minority, not depending on the number of citizens - members of the minority living in the said ULSG, however, only for the “signs of cultural and educational institutions solely serving to the development and promotion of cultural and educational goals of the minorities” (Article 90, paragraph 3).

As consequence of the OFA, the constitutional amendments provide legal possibility to the members of the small(er) communities to “freely express, enjoy and develop their identity and the particulars of their communities and to use the symbols of their own community“, as well as to found institutions and associations for expressing, enjoyment and development of

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185 Interview No. 35, Karbinci.; Interview No. 30, Konche. Interview No. 52, municipality of Studenichani.; Interview No. 53, Studenichani.; Interview No. 12-c, Struga, March, 2011.; Interview No. 39, Dolneni.; Interview No. 25, Kumanovo, March, 2011.

186 Interview No. 63, Staro Nagorichane.

187 The Law uses the term “националности”, and not minorities (малцинства), as a legacy from former Yugoslavia. 1974 Constitution of former Yugoslavia instead of national minorities introduced the term *narodnosti* (Macedonian adaptation *nacionalnosti*) to describe belonging to a minority group, a term difficult to be translated or explained in other languages. Vojin Dimitrijevic suggests that closest to it is the German *Völkerschaft*. The term *narodnosti* (*nacionalnosti*) was widely accepted in the political language and discourse as it was considered that it was less offensive to the minorities indicating only difference, and not inferior position. Dimitrijevic, Vojin. Nationalities and Minorities in the Yugoslav Federation. in Yoram Dinstein and Tabor, Mala. (eds.). *The Protection of Minorities and Human Rights*. Martinus Nijhoff Publishers. 1992: 419 – 434. For the purpose, the term minority and minorities is used.

188 This provision was later annulled by the Constitutional Court with the following explanation: “From one hand, the disputed provision from the Law provides room for use of the languages of the minorities who live in considerable number in the municipality to depend on the will of the majority of members of the Council, it could even result in a situation where this issue could be decided in adverse manner in different municipalities with similar national structure. From another hand though, the Court deems that, according to Article 7, paragraph 3 of the Constitution, the regulation of the issue on official use of the languages of the minorities is exclusively in jurisdiction of the legislative authority and it may not be delegated to the Council under any circumstances.”(Constitutional Court of the Republic of Macedonia. *Decision of the Constitutional Court of the Republic of Macedonia No. 105/97*, 04 February 1998. [Уставен суд, Одлука на Уставен суд, Убр.105/97. 04.02.1998.].Constitutional Court. *Constitutional Court Ruling No. U105/97*. 04.02.1998).

their identity.<sup>189</sup> Additionally, the constitutional amendments provide a legal opportunity for more effective realization of the right to education in their mother tongue within elementary and secondary schooling. However, the non-existence of a law that transposes the right into concrete legal provisions places these constitutional amendments only on declarative level without the possibility to be effectively implemented.

Further, with the constitutional amendments, “...the language and alphabet used by at least 20% of the citizens“ shall become the official language at local level, and the decision on the usage of the languages and alphabets used by less than 20% of the citizens in the units of the local self-government, shall be made by the organs of the ULSG.<sup>190</sup> Hence, the languages of some small(er) communities can become official languages at local level. Although even before the constitutional amendments there was a legal possibility of official use of the minority languages at the local level (provided the community was above 50%), one of the benefits of the OFA is that this issue became subject to regulation by the Constitution and that the threshold is decreased to 20%.

Hence, the Law on the Use of Languages Spoken by Minimum 20% of the Citizens of the Republic of Macedonia and in the Units of the Local Self-Government is a direct benefit from the OFA. It establishes a threshold of minimum 20% for the language of the said community to be in official usage, and the decision on using a language spoken by less than 20% of the population in the ULSG is put under the authority of the Council (Article 41).<sup>191</sup> This means that the law makes distinction between a language in official usage (threshold of 20%) and a language with the possibility to be used (under 20%). Also, the law introduces the double majority or Badinter principle of making a decision when adopting regulations regarding the languages and alphabets (Article 42, 43).

In practice, this means that in municipalities where the members of the Albanian community, the Turkish or the Roma community are majority (since only these groups meet the criteria in several municipalities) there are two official languages, the Macedonian and the language of the community.

However, in some municipalities the threshold of 20% does not represent a practical obstacle to the usage of the language of the members of the small(er) communities. For example, with the decision of the Council, Turkish is in usage in the municipality of Gostivar.<sup>192</sup> The flexibility in relation to the threshold is shown in the case of the municipality of Kumanovo,

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189 Amendment VIII, Constitution of the Republic of Macedonia. *Parliament of Republic of Macedonia Web Site*. <<http://www.sobranie.mk/?ItemID=A431BEE83F63594B8FE11DA66C97BEAF>>. Last accessed 13 October 2011.

190 Amendment V, Constitution of the Republic of Macedonia. *Parliament of Republic of Macedonia Web Site*. <<http://www.sobranie.mk/?ItemID=A431BEE83F63594B8FE11DA66C97BEAF>>. Last accessed 13 October 2011.

191 *Article 2. Law of the Use of Languages that are spoken by at least 20% of the Citizens in the Republic of Macedonia and in the Units of the Local Self-Government. Official Gazette of the Republic of Macedonia no.101/2008.* [Закон за употреба на јазик што го зборуваат најмалку 20% од граѓаните во Република Македонија и во единиците на локалната самоуправа. Службен весник на Република Македонија. бр.101/2008.].

192 Interview No. 65-a, Gostivar.

where Serbian and Romani were introduced, despite the fact that the Serbian and the Roma communities form 8.59% and 4.03% of the population respectively.<sup>193</sup> Still, the representatives of the civil society sector in Kumanovo are of the opinion that the usage of all the languages in the Council would be inefficient.<sup>194</sup> Also, in Staro Nagorichane, the Council adopted a decision on using the Serbian language, although, in the municipality, the Serbian community is represented with less than 20% (19.5%).<sup>195</sup> It is interesting to mention that the respondents in this municipality are on the opinion that as a result to this decision, there is also a need of equipment for simultaneous interpretation to and from Serbian and Macedonian languages.<sup>196</sup>

In several multilingual municipalities such as Dolneni, the usage of the languages is result of a “political dialogue”. Although there are four languages in usage in the municipality of Dolneni, due to financial barriers, only two<sup>197</sup> are in official usage in the Council, and the documents are being issued in all four languages.<sup>198</sup> The situation is similar in the municipality of Gostivar, where only the Albanian and the Macedonian languages are in official usage.<sup>199</sup>

On the other hand, in certain municipalities the threshold of 20% is the main obstacle for using the language of the members of the small(er) communities in the communication with the local self-government administration. For example, although there are above 19% Turks in the municipality of Studenichani, the Council has not decided positively on the request to introduce the Turkish language.<sup>200</sup> However, the main explanation of the Council for rejecting this request is not the lack of political will, but lack of finances.<sup>201</sup> The threshold of 20% is an obstacle for introducing the Turkish language in Karbinci, where according to the census, there are 18.15% Turks (their representative thinks that there are more than 20%).<sup>202</sup> Gradsko, for instance, is an example for non-existence of political will for introducing the language of the community, i.e. the Bosniak language (over 12% of the citizens in this municipality are Bosniaks), because obviously, the Constitutional “requirement,” the threshold of 20%, is not met.<sup>203</sup> There are cases in which there are no requests from the representatives of the small(er) communities for introducing multilingualism, with the explanation that there is no need for that because “second official language would additionally burden the budget of the municipality as that is an expensive process”.<sup>204</sup>

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193 Interview No. 27, Kumanovo, March, 2011.; Interview No. 28, Kumanovo.

194 Interview No. 26-b, Kumanovo, March, 2011.; Interview No. 26-a, Kumanovo, March, 2011.

195 Interview No. 64, Staro Nagorichane.

196 Interview No. 63, Staro Nagorichane.

197 Interview No. 39, Dolneni.

198 Interview No. 40, Dolneni.

199 Interview No. 65-a, Gostivar.

200 Interview No. 55, Studenichani.

201 Interview No. 52, Studenichani.

202 Interview No. 35, Karbinci.

203 Interview No. 47, Gradsko.

204 Interview No. 30, Konche; Interview No. 42, Ohrid.

The situation with the usage of languages is assessed as most alarming in the municipality of Struga, where there is a serious conflict in relation to the official usage of the Albanian language.<sup>205</sup> The situation is completely different in the municipality of Chair, where an agreement was reached for translation in the ICRC, but due to practical reasons they speak the Macedonian language.

In conclusion, the situation and the practices in using the languages at the local level differ from one municipality to another. However, the prevailing finding of this research is that in the majority of the municipalities the members of minorities think that the local usage of their language is of essential importance for their inclusion in the public life and in the decision-making processes. However, quite often, there is a lack of political will and financial resources for the effective implementation of the right to use the language and alphabet used by at least 20% of the citizens (or less than 20%) at the local level.

## 2. The Electoral System

Macedonia does not have a system for ensuring the representation of the minorities in the Parliament and in the municipal councils, which are representative bodies. But, the traditional coalitions and the geographic concentration of the Albanian population made it possible for some of the minorities in Macedonia to have their representatives at the state level, starting from the first Parliament, and at the local level - in the municipal councils and in the seats of mayors.

The electoral models for the parliamentary and for the local elections in Macedonia have been changed several times, including delineation of the boundaries of the electoral districts and of the number of municipalities, which makes difficult the comparison of the efficiency of the different electoral models and the results they give in improving representation of the minority groups. The first electoral model used after gaining the independence is the majoritarian model, initially changed into a mixed model and then into a proportional model.<sup>206</sup> Still, there is a clear trend of representation of the minorities in the state organs since independence. But, according to Eben Friedman, it is equally important to mention that, as opposed to what is taken into consideration in theory that the proportional model is better for providing representation of the numerically small(er) communities, the majoritarian model seems to provide better chances for the independent representation of minorities.<sup>207</sup> Above all, this refers to state level and, because of the need of being included in wider coalitions, compromises are being made for issues that are being considered of interest for the group.

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205 Interview No. 12-c, Struga, March, 2011.

206 Immediately before of the closure of the study, amendments have been adopted to the Electoral Code introducing three new electoral constituencies where the citizens shall vote for one representative per electoral constituency (in the diplomatic-consular representation offices of the Republic of Macedonia) according to the majority rule in one round.

207 Bieber, Florian. *Power-Sharing and the Implementation of the Ohrid Framework Agreement*, in Friedrich-Ebert- Stiftung Skopje. (ed.), *Power-Sharing and the Implementation of the Ohrid Framework Agreement*, Friedrich-Ebert-Stiftung: Skopje, 2008: 28. <[http://www.fes.org.mk/pdf/OFA\\_english.pdf](http://www.fes.org.mk/pdf/OFA_english.pdf)>. Last accessed 14 June 2011.

This is also noted by Kenan Hasip, MP from the Democratic Party of the Turks in the Parliament (composition 2008-2011). In the dispute for possible introduction of reserved seats, he argues, *inter alia*, that the electoral model favours the larger political entities and puts the representatives of the small(er) ethnic communities, whether they liked it or not, in a position to have to make coalitions in order to provide participation in the parliament.<sup>208</sup> Also, Rubin Zemon<sup>209</sup> proposes the introduction of a mechanism for providing adequate and equitable representation in the Parliament and in the local self-government.<sup>210</sup> Although the idea for reserved seats for the representatives of the small(er) ethnic communities has been subject to discussion in several occasions and on different levels, it is not supported enough. The reserved seats as a solution for small(er) ethnic communities' representation has been mentioned by the majority of the respondents,<sup>211</sup> and the Croatian model was pointed out as a model that would suit Macedonia.<sup>212</sup>

At the same time, the example with the municipality of Gradsko shows that the electoral system and the current territorial organization do not produce satisfactory results securing representation of the small(er) ethnic communities in the ULSG even when they exceed the threshold of 20% altogether. A similar example is the municipality of Karbinci, where there is only one representative from the Turk community in the Council, besides the fact that Turks constitute 18.15% of the municipality (and more than 20% are members of minority communities). The Turks are not adequately represented in the municipality of Radovish as well, as they represent 15% of the population and have only 1 representative in the Council.

### 3. Decentralization and Territorial Organization

The Constitution (before the constitutional amendments) differentiated between two types of ULSGs - ULSGs where the members of the minorities lived as majority and ULSG where the members of the minorities lived in considerable number. In both, the official usage of the language and alphabet of the minorities was proscribed to be regulated by law (in this case, with the Law on Local Self-Government from 1995). One of the key laws in which this constitutional provision is transposed is the Law on local self-government from 1995.<sup>213</sup> The law differentiates between the same two categories of ULSG as the Constitution, specifying

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208 Commission for Inter-Ethnic Relations. Parliament of the Republic of Macedonia. Minutes, 18 November 2009. [Комитет за односи меѓу заедниците, Собрание на Република Македонија. *Сџенографски белешки од Седницата на Комисијата за односи меѓу заедниците*, 18.11.2009 година.].

209 Rubin Zemon lecturer in multiculturalism and a member of the Presidency of the Union of Balkan Egyptians.

210 See: Commission for Inter-Ethnic Relations. Parliament of the Republic of Macedonia. Minutes, 18 November 2009. [Комитет за односи меѓу заедниците, Собрание на Република Македонија. *Сџенографски белешки од Седницата на Комисијата за односи меѓу заедниците*, 18.11.2009 година.].

211 Interview No. 45, Ohrid.

212 Interview No. 7, Skopje, February, 2011.

213 Law on Local Self-Government. *Official Gazette of the Republic of Macedonia*. No. 52/1995, 60/1995.

the threshold of 50% as condition for a certain municipality to be qualified as ULSG where the members of the minorities live as majority (Article 88, paragraph 1). On the other hand, the threshold of 20% is a condition for a certain municipality to be qualified as ULSG where considerable number of the members of the minorities lives (Article 88, paragraph 2).

The law endorses the establishment of a “Commission on Inter-Ethnic Relations in the frames of the Council of the ULSG, where the members of the minorities live as a majority or in a considerable number, and the Commission would contain representatives from each minority represented in that ULSG” (Article 25). Further, in the ULSG, where the members of the minorities live as a majority or in a considerable number, the Law on local self-government ensures the usage of the language of the minority, along with the Macedonian language and its Cyrillic alphabet (Article 89). This usage is limited to the sessions of the Council and the other organs of the ULSG and their acts. Only where the members of the minority are in majority, their language and alphabet can be put into usage in the public services, the public institutions and the public enterprises founded by the ULSG (Article 89), as well as on the signs.

Also, the Constitution guarantees the right of the local self-government to decide “on issues of local importance, and particularly in the areas of urbanism, utilities, culture, sports, social and child protection, preschool upbringing, elementary education, basic health protection and in other areas determined by law” (Article 115). However, the majority of these activities remain within the competences of the central authorities dealing with these issues via the regional units of the ministries.

Besides the specific provisions for the minorities, and due to the limited implementation, the Law did not provide for an effective implementation of the right to participation for the members of minorities in the municipalities where they are the majority, neither in the municipalities where they are in a considerable number. As pointed out by certain researchers, the law on local self-government, to a considerable degree “narrowed and reduced the independent authorities of the municipality to problems regarding local utilities and the financing was also centralized to a certain degree”.<sup>214</sup> The law had not been adopted for several years, and its adoption established a centralized self-government to a great extent.<sup>215</sup> Also, besides the existence of legal obligation for establishing a Commission on Inter-Ethnic Relations in the frames of the municipal councils, none of the forty ethnically mixed communities in Macedonia established such commissions.<sup>216</sup>

For these reasons, the law was exposed to serious criticism by the ECRI, which in its report recommends that the authorities supervise the efficiency of the arrangements for the

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214 Maleska, Mirjana. *Ethnic Conflict and Accommodation: Macedonia 1991 – 1997*. Kultura: Skopje, 1997: 74. [Малеска, Мирјана. *Етничкиот конфликт и прилагодувањето: Македонија 1991 - 1997*. Култура: Скопје 1997.]

215 Ibid

216 See: Najcevska, Mirjana, *Bilingualism in a Kumanovo Kindergarten* in Nenad Dimitrijevic. (ed.). *Managing Multi-Ethnic Coexistence in the Countries of the Former Yugoslavia*, LGI/OSI, 2000.

minorities and ratification of the European Charter for Regional or Minority Languages.<sup>217</sup> The ECRI also directs criticism towards the setup and the functioning of the Council for Inter-Ethnic Relations, recommending that the possibility for participation of other minority groups in the Council be reviewed.<sup>218</sup> With regards to the type of inclusion of the minority groups, *inter alia*, ECRI notes that besides the participation of the Albanians and other minority groups in the politics of state and local level, these groups are under-represented in the state institutions, like the public services at national and local level, the police and the judiciary.<sup>219</sup> As a self-explanatory example, we point out the level of unemployment within the Roma community in 1999 at 71.8%, as opposed to the national level of 32.4%.<sup>220</sup>

The constitutional amendments regulating this field provide the legal possibility for effective participation of the members of the small(er) communities in local self-government, which obtained wider competences for making decisions on issues of local significance in the process of decentralization, particularly in the areas of public service, urban and rural planning, protection of environment, local economic development, local financing, utilities, culture, sports, social and child protection, education, health protection and in other areas determined by law.

Decentralization is one of the basic pillars of the OFA. It provides possibilities for the communities at the local level to have greater control over the issues of direct interest. Following the provisions of the OFA, transposed in the Constitution and the Law on Local Self-government, the Law on Territorial Organization, the Law on Financing the Units of the Local Self-Government as well as other laws, the conditions necessary for decentralization and transfer of competences and resources at the local level are being gradually met.

The responsibility for developing and proposing measures for promoting the local self-government, for the needs of the units of the local self-government, territorial organization of the state, proposing policies for equal regional development and stimulating the undeveloped areas belongs to the Ministry of local self-government. In 1997, Macedonia ratified the European Charter on Local Self-Government (CoE) and prepared a legal framework for

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217 Council of Europe: European Commission against Racism and Intolerance. (*First Report on "the former Yugoslav Republic of Macedonia"*, 24 May 1999, < [http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Former\\_Yugoslav\\_Republic\\_Macedonia/MKD-CbC-I-1999-031-EN.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Former_Yugoslav_Republic_Macedonia/MKD-CbC-I-1999-031-EN.pdf)>. Last accessed 30 June 2011.

218 Council of Europe: European Commission Against Racism and Intolerance (ECRI), *Second Report on "the Former Yugoslav Republic of Macedonia"*, Adopted on 16 June 2000, 3 April 2001, < [http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Former\\_Yugoslav\\_Republic\\_Macedonia/MKD-CbC-II-2001-005-EN.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Former_Yugoslav_Republic_Macedonia/MKD-CbC-II-2001-005-EN.pdf)>. Last Accessed 30 June 2011.

219 Council of Europe: European Commission Against Racism and Intolerance (ECRI), *Second Report on "the Former Yugoslav Republic of Macedonia"*, Adopted on 16 June 2000, 3 April 2001, < [http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Former\\_Yugoslav\\_Republic\\_Macedonia/MKD-CbC-II-2001-005-EN.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Former_Yugoslav_Republic_Macedonia/MKD-CbC-II-2001-005-EN.pdf)>. Last Accessed 30 June 2011.

220 Council of Europe: European Commission Against Racism and Intolerance (ECRI), *Second Report on "the Former Yugoslav Republic of Macedonia"*, Adopted on 16 June 2000, 3 April 2001, < [http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Former\\_Yugoslav\\_Republic\\_Macedonia/MKD-CbC-II-2001-005-EN.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Former_Yugoslav_Republic_Macedonia/MKD-CbC-II-2001-005-EN.pdf)>. Last Accessed 30 June 2011.

the support of the decentralization process in the country that started in 1999.<sup>221</sup> The basic strategic document for the decentralization of the country is the Strategy on Reforms in the Local Self-Government from 1999, whose purpose is to build a local self-government capable for managing the local activities and services of interest to the local population. In 2001, the OFA set the basis for a more decentralized administration in the country.

In 2002, a new Law on Local Self-Government was adopted, which significantly expands the list of competences of the municipality, many of which are of direct interest for the minorities.<sup>222</sup> The Law on territorial organization of the local self-government was adopted in Macedonia in 2004, decreasing the number of municipalities from 123 to 84. It is important to mention that some authors note non-transparency in the process of adopting the law,<sup>223</sup> to the detriment of the interests of citizens at the local level.<sup>224</sup>

The Law on financing the Units of Local Self-Government<sup>225</sup> introduces significant changes in relation to the fiscal decentralization and transferring the decision-making and financial management on local level, as well as a possibility for the municipality to acquire own revenues and revenues from third parties. The previous efforts for fiscal decentralization remain only on paper.<sup>226</sup>

ECRI points out the concern for the small(er) minorities who fear from the possibility “the process of decentralization and reshaping of the municipal boundaries [to] result in decreasing their number in those municipalities where they would otherwise represent 20%”.<sup>227</sup> According to Vankovska, the reshaping of the municipal boundaries brings the ethnic communities that are numerically weaker, i.e. the members of the small(er) ethnic communities, in straitened position, where the interests of the local population are neglected or sacrificed in favour of the political elites (so called ‘gerrymandering’).<sup>228</sup> Hence, the members of the Turkish community have previously used the Turkish language as official in 5 municipalities, and with the new law they use it in only 4 municipalities. According to the Program of

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221 OSCE Spillover Mission to Skopje. *Report for the Process of Fiscal Decentralization in Macedonia*. Urban Rural Consulting – URC, Skopje, October, 2007.

222 Including urbanism, environmental protection, local economic development, public utilities, culture, sport, social protection and child care, education, health, etc.

223 For example: Vankovska, Biljana, *The Role of the Ohrid Framework Agreement and the Peace Process in Macedonia*, <<http://ww.fzf.ukim.edu.mk>>. Last accessed 13 April 2011.

224 According to Vankovska, the European representatives deliberately stressed the violation of the European charter of local self-government (*Ibid*).

225 Law on the Financing the Units of Local Self Government. *Official Gazette of the Republic of Macedonia No. 61/04*. [Закон за финансирање на единиците на локалната самоуправа. Службен весник на Република Македонија. бр.61/04].

226 OSCE Spillover Mission to Skopje. *Report for the Process of Fiscal Decentralization in Macedonia*. Urban Rural Consulting – URC, Skopje, October, 2007.

227 Council of Europe: European Commission Against Racism and Intolerance (ECRI), *Third Report on “the Former Yugoslav Republic of Macedonia”*, Adopted on 25 June 2004, 15 February 2005, CRI(2005)4, <<http://www.unhcr.org/refworld/docid/46efa2e40.html>>. Last accessed 30 June 2011.

228 Vankovska, Biljana, *The Role of the Ohrid Framework Agreement and the Peace Process in Macedonia*, <<http://ww.fzf.ukim.edu.mk>>. Last accessed 13 April 2011.

the Ministry of Local Self-Government 2008-2010, significant progress has been made in relation to the legal and bylaw framework and the transfer of competences from central to local level (employees, property and movable commodities, documentation and other property from central to local level, and etc.), but the fiscal decentralization remains a challenge, particularly with regards to the discretionary right of the municipalities to make decisions independently in relation to the finances.<sup>229</sup>

The positions of the respondents do not differ much from what has been identified in this program. Frchkoski points the fiscal centralization as the main obstacle for the process of decentralization. According to him, the government does not have the capacity to transfer significant resources to the municipalities. Also, other respondents share this opinion,<sup>230</sup> although it can be complemented that the process of decentralization is positive to a great extent, but in view of the fiscal decentralization there is still work to be done, particularly in the part of building capacities.<sup>231</sup> The analyses of the progress of decentralization point out that this process has slowed down, in comparison to previous years.<sup>232</sup> Some of the respondents<sup>233</sup> share the same opinion, pointing out the need for greater efforts by the central government for the implementation of the decentralization process.<sup>234</sup>

In conclusion, the relationship between the central and the local government faces certain challenges. Although the process of decentralization allows for the municipalities to assist the citizens, the quality of the services can still be debated and it largely depends on the capacities of the municipality itself, rather than on the relationship, i.e. on the communication and cooperation, with the central government.<sup>235</sup> The criticisms are directed towards the unequal treatment of the central government towards the different ULGs, which can potentially reflect on the inter-ethnic relations and balance of powers in the state.<sup>236</sup> Hence, the image presented is a reflection of several aspects which, stimulated by the slow progress of fiscal decentralization, brings many municipalities, particularly the rural and the less developed ones, in a difficult situation, thus making it almost impossible for them to meet the obligations and to implement the undertaken obligations.

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229 Interview No. 53, Studenichani.

230 Interview No. 6, Skopje, February, 2011.

231 Interview No. 9, Skopje, February, 2011.

232 Foundation Open Society Institute – Macedonia (FOSIM). *Comparative analysis of the implementation of the decentralization process in the areas of finance, urbanism and education (2008-2009)*, Skopje, 2010. [ФИОМ. *Компаративна анализа за перформансите на оиштините во Република Македонија во областите образование, урбанизам и фискалната децентрализација за периодот 2008 - 2009*. Скопје, 2010.]. <<http://www.soros.org.mk/dokumenti/21-12-2010-KOMPARATIVNA-ANALIZA.pdf>>. Last accessed 30 June 2011.

233 Interview No. 48, Gradsko.

234 Interview No. 37, Dolneni.

235 Interview No. 28, Kumanovo.

236 Interview No. 41, Ohrid; Interview No. 70-a, Chair.

#### 4. Special Procedures: The Right to Veto

The legal framework before the OFA did not include a protective mechanism from outvoting the minorities regarding a decision that affects them directly as groups. With the aim to improve the conditions of practicing the law on effective (political) participation of the members of the minorities in Macedonia, after the OFA, the constitutional and the legislative framework introduces the measure of making decisions according to the so-called Badinter Principle. The Badinter Principle defines rules in the process of making decisions that call for simultaneous majority of votes from the present representatives, as well as majority of votes from the present representatives that belong to the communities that are not considered majority in Macedonia.

The principle is important for decision-making and for the participation of the minorities at the local level as well, because the same principle is also introduced in the procedures for voting in the councils of the municipalities. At the local level, the Badinter Principle proscribes making decisions with majority of votes from the present members of the council where, the majority of votes from the present members of the council that belong to the communities not considered as majority in the municipality, must be ensured. According to this principle, the local authorities have competences for regulations regarding culture, usage of language and alphabet that are used by less than 20% of the citizens in the municipality, determining and using the coat of arms and the flag of the municipality (Article 41, paragraph 3, Law on local self-government, 2002).<sup>237</sup> The City of Skopje also applies the Badinter Principle in the decision-making processes for using the language and alphabet used by less than 20% of the population of the City of Skopje (Article 50 and 51, Law on the City of Skopje, 2004).<sup>238</sup>

#### 5. Special Bodies

One of the key laws regarding the rights of the minorities in Macedonia before 2001 was the Law on local self-government from 1995,<sup>239</sup> which, as stated above, mentioned two categories of ULSG: ULSG in which the majority of the population are members of the minorities (above 50% of the population) and ULSG where the members of the minorities live in considerable number (over 20% of the population). This law envisaged formation of a special body called Commission for Inter-Ethnic Relations, which is formed where the members of the minorities live as majority or at least in considerable part, and it is being founded in the

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237 Law on Local Self-Government of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia No. 5/2002*. [Закон за локална самоуправа. Службен весник на Република Македонија. бр.5/2002.]. <[http://www.cilevics.eu/minelres/NationalLegislation/Macedonia/Macedonia\\_Municipip2002\\_excerpts\\_English.htm](http://www.cilevics.eu/minelres/NationalLegislation/Macedonia/Macedonia_Municipip2002_excerpts_English.htm)>. Last accessed 01 October 2011.

238 Law on the City of Skopje. *Official Gazette of the Republic of Macedonia No. 55/04*, 16 August 2004. [Закон за градот Скопје. Службен весник на Република Македонија. бр.55/04 од 16.08.2004 година].

239 Law on Local Self-Government of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia No. 52/1995, 60/1995*. [Закон за локална самоуправа. Службен весник на Република Македонија. бр.52/1995.]. <[http://www.urban.org/PDF/mcd\\_locgov.pdf](http://www.urban.org/PDF/mcd_locgov.pdf)>. Last accessed 01 October 2011.

frames of the Council. The law provided for representatives of each minority represented in certain ULSG to be represented in the composition of this body.<sup>240</sup>

At the central level, the most significant body before OFA, regarding the minority rights, was the parliamentary Council for Inter-Ethnic Relations, envisaged by the Constitution from 1991. This Council composed of the president of the Parliament and of two representatives each from the Macedonians, Albanians, Turks, Vlachs, Roma and two members from the other minorities in Macedonia (by suggestion of the President of the Republic), had the role to provide opinions and suggestions on issues related to inter-ethnic relations in Macedonia, for which the Parliament was obliged to express its opinion.

But, the Council for Inter-Ethnic Relations, as a body, has never been active. Apart from the many events in Macedonia from 1991 to 2001, which should have been a subject of its discussion according to the competences it possesses, the Council remains practically inactive.

After the OFA, the institutional system establishes several more bodies whose primary mandates, besides the implementation of the OFA, focus on the minorities and the inter-ethnic relations, with competences in securing effective political participation at the local level. These are the Agency for Minority Rights Realization which is an independent organ of the government, the Committee on Inter-Community Relations (founded in the frames of the Parliament) and the Commissions for Inter-Ethnic Relations (founded in the frames of the ULSG).

The Law on Promoting and Protecting the Rights of the Members of the Communities with less than 20% of the Population in Republic of Macedonia is the only law that exclusively regulates the manner of exercising the rights of the members of the small(er) ethnic communities, as well as it permorms supervision in their implementation. Namely, it regulates issues regarding rights in the field of employment, pursuant to the principles of adequate and equitable representation, usage of language, education, culture, etc. The members of the communities who do not reach the threshold of 20% are guaranteed adequate and equitable representation during employment in the public administration and other state-level public services.<sup>241</sup> The members of these communities have the right to use their symbols according to the law.

The body formed by this law is the Agency for Realization of the Rights of the Communities (ARRC), competent for promoting the rights of the members of the small(er) ethnic communities.<sup>242</sup> The basic purpose of ARRC is to enable greater integration of the members of the communities, as equal citizens of the country, in all spheres of the social life, preserving their ethnic and cultural diversities. It performs supervision of the implementation of the

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<sup>240</sup> *Ibid.* Article 25

<sup>241</sup> *Article. 4. Law on the Promotion and Protection of the Rights of the Members of Communities which are Less than 20% of the Population of the Republic of Macedonia. Official Gazette of the Republic of Macedonia No. 92/2008.* [Закон за унапредување и заштита на правата на припадниците на заедниците кои се помалку од 20% од населението во Република Македонија. Службен весник на Република Македонија. бр.92/2008.].

<sup>242</sup> *Article 9. Ibid.*

laws that determine the rights of the members of the communities representing less than 20% of the population in Macedonia and it harmonizes the work of the different organs of the state administration with jurisdiction to promote and protect the rights of the members of the communities.<sup>243</sup> The agency harmonizes its work with SIOFA (General Secretariat of the Government of the Republic of Macedonia), with the Administration for Development and Promotion of Education in Languages of Members of Communities (Ministry of education and science of RM) and with the Administration for Affirmation and Promotion of Culture of Members of Communities in the Republic of Macedonia (Ministry of Culture of the Republic of Macedonia).

For now, the establishment and the functioning of this agency are disputable. The respondents of the civil society sector<sup>244</sup> and of the state institutions<sup>245</sup> characterize the agency as insufficiently visible in its activities, and its effectiveness<sup>246</sup> and efficiency are arguable.<sup>247</sup> When analysing the functioning of the ARRC it is important to take into consideration the constant decrease of its budget. With each revision of the budget, the funds for the functioning of ARRC are being decreased: from 9,907,000 denars in 2009 to 6,417,000 in 2010 (decrease by 35.23%) and with the next rebalance of the State Budget, the funding was decreased to 6,291,000 denars.<sup>248</sup> But, during the last year, with the support of OSCE, the ARRC organized a series of activities for strengthening their own capacities, and the capacities of the associations working with minorities and on minority rights.

The limited mandate of the ARRC is also somewhat of a challenge, both at the central and at the local level. The strengthening of the cooperation between the Inter-Community Relations Commissions (see below) and ARRC can provide excellent results for the cooperation of this body with the municipalities, but also in the process of including citizens on the local level.

Besides ARRC, after OFA, the Committee was founded as a parliamentary body composed of elected representatives from all communities, as a successor to the Council for Inter-Ethnic Relations.<sup>249</sup> The committee is composed of seven members from the Macedonian MPs, seven members from the Albanian MPs, one member of the Turk MPs, one member of the

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243 Government of the Republic of Macedonia. Agency for the Realization of the Rights of the Communities. *Working Plan of the Agency for the Realization of the Rights of the Communities*. Website of the Agency for the Realization of the Rights of the Communities. [Влада на Република Македонија. Агенција за остварување на правата на заедниците. Програмата за работа на Агенцијата за остварување на правата на заедниците за 2010 година.]. <[http://aopz.gov.mk/materijali/Godisna%20programa%202011%20AOPZ%20\(1\).pdf](http://aopz.gov.mk/materijali/Godisna%20programa%202011%20AOPZ%20(1).pdf)>. Last accessed 29 April 2011.

244 Interview No. 9, Skopje, February, 2011.; Interview No. 7, Skopje, February, 2011.

245 Interview No. 2, Skopje, February, 2011.

246 Interview No. 9, Skopje, February, 2011.

247 Interview No. 7, Skopje, February, 2011.

248 Draft-budget of the Republic of Macedonia. *Government of the Republic of Macedonia*. No. 51-6343/1. Skopje, October, 2010. <http://www.sobranie.mk/>. Last accessed 13 October 2011.

249 Article 3. Law on the Committee for Relations between the Communities. *Official Gazette of the Republic of Macedonia No. 150/200*. [Законот за Комитетот за односи меѓу заедниците. *Службен весник на Република Македонија*. бр.150/2007.].

Vlachs MPs, one member of the Roma MPs, one member of the Serbian MPs and one member of the Bosniak MPs.<sup>250</sup> One of the competences of the Committee is to review the issues regarding the ‘implementation of the principle for equal and equitable representation of the citizens that belong to all communities in the organs of the state authority and in the other public institutions on all levels’ (Article 9), which means also at the local level.

According to the respondents, the current composition of the Committee, in comparison with its predecessor, only reaffirms the changing character of the country towards bi-national. Its composition does not correspond to the principle of adequate and equitable representation.<sup>251</sup> As a matter of fact, it is easy to imagine a situation where the Macedonian or the Albanian members would outvote the remaining five members from the small(er) ethnic communities. Furthermore, it is unimaginable when a decision of interest for the small(er) ethnic communities can be presented and discussed in the frames of this body on equal level. This fact imposes the question of the necessity for existence of such a large discrepancy in the number of Macedonian and Albanian members on one hand, and the small(er) ethnic communities on the other.

As counterpart of the Committee, a special body is formed on local level in each ULSG called Inter-Community Relations Commission (ICRC), founded on the basis of the Law on Local Self-Government from 2002 (Article 55).<sup>252</sup> The municipalities, in which more than 20% of the population belongs to an ethnic community that is not a majority, are legally obligated to form an ICRC.<sup>253</sup> Each ethnic community living in the municipality should be equally represented in this ICRC, with equal number of members.<sup>254</sup> The role of the ICRC is to debate on issues that are significant for the inter-ethnic relations and to provide recommendations and opinions to the municipality, which the Council is obliged to take into consideration

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250 The law contains provision determining the time for expressing affiliation, and that is in the election campaign while submitting the lists of the candidates. According to Article 5 from the Law, “when submitting the lists of candidates for MPs, the candidate for MP shall submit a statement to the DIK (State Election Commission) for affiliation towards a certain community”. During the establishment of the Committee, only this statement is taken into consideration.

251 Siljanovska, Gordana. *The Committee taking the role of arbitrator*. Vreme, 31 July 2007. [Силјановска, Гордана. „Комитетот во улога на арбитер“, Време, дневен весник. 31.07.2007].

252 “Inter-Community Relations Commission shall be founded in the municipality where at least 20% of the total number of citizens, determined on the last census of the population, are members of certain community.” See: Article 55, paragraph 1. Law on Local Self-Government of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia No. 5/2002*. [Закон за локална самоуправа. Службен весник на Република Македонија. бр.5/2002.]. <[http://www.cilevics.eu/minelres/NationalLegislation/Macedonia/Macedonia\\_Municip2002\\_excerpts\\_English.htm](http://www.cilevics.eu/minelres/NationalLegislation/Macedonia/Macedonia_Municip2002_excerpts_English.htm)>. Last accessed 01 October 2011.

253 Although in practice there are cases with municipalities, which are not obligated to found ICRC, but they still did: Resen, Valandovo, Vrapchishte, Drugovo, Dojran, Kratovo, Ilinden, Lipkovo, Lozovo, Makedonski Brod, Saraj, Staro Nagorichane, Gostivar, Gevgelija and Tearce. See Ademi’s expose: Commission for Inter-Ethnic Relations. Parliament of the Republic of Macedonia. Minutes, 18 November 2009. [Комитет за односи меѓу заедниците, Собрание на Република Македонија. Сџенографски белешки од Седницата на Комитетот за односи меѓу заедниците, 18.11.2009 година.].

254 The research showed that the principle of equality is not applied in every ICRC (for example, municipality of Karbinci, Chair).

and to decide upon.<sup>255</sup> The manner of appointing, the number of members and the number of representatives of each community in ICRC is subject to decision by ULSG, and this is determined in its statute.<sup>256</sup>

Bearing in mind the fact that the proportional electoral model for the local elections does not guarantee proportional representation of all of the ethnic communities at municipal level in the Council, as shown above in the study, the functioning of the ICRC is of essential importance. This commission is an advisory body that ensures institutional dialogue between the different ethnic communities, i.e. it represents an instrument for participation of the citizens in the process of decision-making for issues of interest to the communities: culture, language, flags, symbols, names of institutions, etc. ICRC reviews the questions related to the identity of the members of the communities, resolving conflict situations regarding ‘ethnic moments’, but they also have a role in preventing conflicts through promotion of tolerance, non-discrimination and mutual respect. Undoubtedly, the role of the ICRC is also related to the issues of equitable representation and active participation of the citizens in the public life.

Table no. 6: Data on founded ICRC per ULSG



ULSG/Source	Data obtained from ZELS <sup>257</sup>	Data from CRPRC Studiorum <sup>258</sup>	Legal obligation to found ICRC
Aerodrom	/	No	No
Arachinovo	Yes	/	No
Berovo	/	No	No
Bitola	/	No	No
Bogdanci	/	No	No
Bogovinje	Yes	Yes	No
Bosilovo	/	No	No
Brvenica	/	Yes	Yes
Butel	Yes	Yes	Yes
Valandovo	Yes	Yes	No
Veles	/	No	No

255 Article 55, paragraph 5. Law on Local Self-Government of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia No. 5/2002*. [Закон за локална самоуправа. Службен весник на Република Македонија. бр.5/2002.]. <[http://www.cilevics.eu/minelres/NationalLegislation/Macedonia/Macedonia\\_Municip2002\\_excerpts\\_English.htm](http://www.cilevics.eu/minelres/NationalLegislation/Macedonia/Macedonia_Municip2002_excerpts_English.htm)>. Last accessed 01 October 2011.

256 Practice shows that quite often the members of the ICRC are also members of the Council. There are external members in some municipalities, but quite often they do not come to the sessions regarding the fact that there is lack of finances to cover the expenses for their participation.

ULSG/Source	Data obtained from ZELS <sup>257</sup>	Data from CRPRC Studiorum <sup>258</sup>	Legal obligation to found ICRC
Vraneshtica	Yes	/	Yes
Vrapchishte	Yes	/	No
Gazi Baba	/	Yes	No
Gevgelija	Yes	Yes	No
Gostivar	Yes	Yes	No
City of Skopje	Yes	Yes	Yes
Gradsko	/	Yes	No
Debar	Yes	Yes	Yes
Delchevo	Yes	/	No
Demir Hisar	/	No	No
Dojran	Yes	Yes	No
Dolneni	Yes	Yes	Yes
Drugovo	Yes	Yes	No
Gjorche Petrov	/	No	No
Zelenikovo	/	Yes	Yes
Zhelino	/	No	No
Ilinden	Yes	No	No
Jegunovce	Yes	Yes	Yes
Karbinci	Yes	/	No
Karposh	/	No	No
Kisela Voda	/	No	No
Kichevo	Yes	/	Yes
Konche	Yes	/	No
Kochani	Yes	/	No
Kratovo	Yes	/	No
Krushevo	/	Yes	Yes
Kumanovo	Yes	Yes	Yes
Lipkovo	Yes	/	No
Lozovo	Yes	Yes	No
Mavrovo – Rostushe	Yes	Yes	Yes
Makedonski Brod	Yes	No	No
Novaci	/	No	No
Oslomej	Yes	Yes	No
Ohrid	/	No	No
Petrovec	Yes	Yes	Yes
Probishtip	/	No	No
Radovich	/	No	No

ULSG/Source	Data obtained from ZELS <sup>257</sup>	Data from CRPRC Studiorum <sup>258</sup>	Legal obligation to found ICRC
Saraj	Yes	Yes	No
Sopishte	/	/	Yes
Staro Nagorichane	Yes	Yes	No
Struga	/	Yes	Yes
Studenichani	Yes		No
Tearce	/	Yes	No
Tetovo	Yes	Yes	Yes
Centar	/	No	No
Centar Zhupa	/	Yes	No
Chair	Yes	Yes	Yes
Chashka	/	Yes	Yes
Shtip	/	No	No
Shuto Orizari	/	No <sup>259</sup>	Yes

Source: Letter from ZELS to CRPRC Studiorum (June, 2011); letters from ULSG to CRPRC Studiorum (July 2011).257258259

In line with the 20% threshold, there is still room for different interpretations due to the ambiguity of the expression “members of a certain community.” For example, it remains unclear in which municipalities the ICRC does not have to be established: whether in the municipalities where the majority is over 80%, or in the municipalities where none of the non-majority community surpasses the threshold of 20%.<sup>260</sup> If the interpretation is the latter, the legal provision does not proscribe the establishment of an ICRC even in cases when there are several

257 Data obtained from ZELS shall mean response obtained from ZELS on request from CRPRC Studiorum for delivery of data for which ULSG has founded ICRC. The fields are filled on the following manner: YES (according to data obtained from ZELS and ICRC was founded in the mentioned ULSG); or / (the said ULSG is not mentioned in the letter to ZELS).

258 Data from CRPRC Studiorum shall mean response obtained from ULSG on request from CRPRC Studiorum for delivery of data whether they founded ICRC in their ULSG, and if they did, they were asked to give information on its composition. The fields are filled in the following manner: YES (letter from ULSG was received according to which ICRC had been founded); NO (letter from ULSG was received according to which ICRC had not been founded); or / (response to the letter has not been received).

259 The municipality of Shuto Orizari sent two letters as response to the request from CRPRC Studiorum regarding information whether ICRC had been founded in the municipality, whereas in one letter they state that such commission had been founded, and with the following letter they withdraw the first letter noting that another will follow. The said letter was not received until the date of closing of this study.

260 Kenan Hasipi proposes revision of the provision envisaging mandatory foundation of ICRC where one community is over 20%, because, according to him, in these municipalities the said community already exercises bigger linguistic and other rights, which makes the existence of the ICRC less important, as opposed to the municipalities where this number is below 20% and these groups do not exercise their rights. For full discussion, see: Commission for Inter-Ethnic Relations. Parliament of the Republic of Macedonia. Minutes, 30 October 2009. [Комитет за односи меѓу заедниците, Собрание на Република Македонија. Сџенографски белешки од Седницата на Комитетот за односи меѓу заедниците, 30.10.2009 година.].

communities representing above 50% of the population, but separately, they do not exceed the threshold of 20%.<sup>261</sup> Still, in practice, in the majority of cases, the threshold of 20% is not being applied as a necessary condition for establishing ICRC, but there are cases when the threshold of 20% is a key barrier for this.<sup>262</sup> In Radovish, for example, there is no ICRC founded, but the Council has founded a Commission on Equitable Representation of the Minorities, which, along with the Commission on Equal Opportunities, is being consulted in cases of adopting decisions that affect the minority groups.<sup>263</sup>

In the places where they are founded, the ICRCs face various kinds of challenges. In some places, the members of the ICRC complain of negligence by the Council, and even that citizens are not well informed about the existence of the ICRC and its membership.<sup>264</sup> In certain places, a problem that is stated is the fact that the ICRC are not founded according to the legal provision for equal number of representatives from each community represented in the municipality,<sup>265</sup> and in some places there are cases where the members are appointed without their knowledge.<sup>266</sup> For some representatives of the ULSG, the threshold of 20% prevents the members of the small(er) ethnic communities from being included in the decision-making processes and in the work of the municipality in a more effective manner, and by that, in the work of the ICRC.<sup>267</sup>

The members of the ICRC are most often either advisors in the Councils of the municipalities or just external members, or the composition is mixed i.e. besides advisors there are also external members. According to some researches, the base for electing members of this commission is too narrow and under strong party influence,<sup>268</sup> which is complemented with the opinion that it would be ideal for all members of the ICRC to be external members.<sup>269</sup> Also, the unequal working conditions for the members of the ICRC are emphasized, depending

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261 For example, see: "If there is a minority community in the municipality with for example 19% of the total number of citizens, no commission shall be founded, and the community over 20% of representation acts like visa for the remaining communities in the municipalities to be represented in the Commission", Maleska, M., L. Hristova, J. Ananiev. Power Sharing: New Concept of Decision Making Process in Multicultural Municipalities. *New Balkan Politics*. Issue 10. [Малеска, М., Христова, Л., Ананиев, Ј., Споделување на власт, нов модел на одлучување во мултикултурните општини.] <[http://www.newbalkanpolitics.org.mk/political\\_essays/powersharing\\_mk.html](http://www.newbalkanpolitics.org.mk/political_essays/powersharing_mk.html)>. Last accessed 18 April 2011.

262 Like for example in the municipalities of Ohrid and Shtip.

263 Interview No. 16, Radovish, March, 2011.

264 Interview No. 12-c, Struga, March, 2011.

265 Interview No. 35, Karbinci.; Interview No. 15, Struga, March, 2011.; Interview No. 57, Chashka.

266 Interview No. 67, Gostivar.

267 Interview No. 52, Studenichani.

268 Maleska, M., L. Hristova, J. Ananiev. Power Sharing: New Concept of Decision Making Process in Multicultural Municipalities. *New Balkan Politics*. Issue 10. [Малеска, М., Христова, Л., Ананиев, Ј., Споделување на власт, нов модел на одлучување во мултикултурните општини.] <[http://www.newbalkanpolitics.org.mk/political\\_essays/powersharing\\_mk.html](http://www.newbalkanpolitics.org.mk/political_essays/powersharing_mk.html)>. Last accessed 18 April 2011.

269 Interview No. 61, Skopje.

on whether they are advisors in the municipality or external members,<sup>270</sup> which, according to some of the respondents, should not be the case.<sup>271</sup>

For many of the respondents, the key factor for successful work of the ICRC is informing the local population about their existence, role and work.<sup>272</sup> The members of the ICRC often point out that the citizens do not actually know that such commission exists in the frames of their ULSG. Another challenge they face, and which directly affects the functioning is the unclear legal setup.<sup>273</sup> There are no elaborated mechanisms from the ICRC for consultation with the citizens, or for submitting proposals to the Councils.<sup>274</sup> Some of the respondents that are members of the ICRC and of the Council, point out that they purposefully schedule the meetings of the ICRC immediately before the sessions of the Council, because the travel expenses are covered for Council sessions, but this solution results in lack of time for thorough debates, and also for consultations with the citizens.<sup>275</sup> Even those ICRCs that are assessed as successful from the international organizations are not satisfied by their influence in the Council,<sup>276</sup> and they complain for having insufficient support from their municipality.<sup>277</sup> Probably the most difficult problem ICRCs face is the lack of financial resources for their work.<sup>278</sup> ICRCs do not have the basic assets and resources for basic administrative operation and for organizing their meetings. In certain cases, the lack of resources is justified by the inherited financial debts<sup>279</sup> or by the severe economic situation.

Regarding the role of ICRC, certain municipalities point to the positive role regarding the representation of the interests of the citizens from the ethnic communities via the Commission,<sup>280</sup> which leads towards the improvement of inter-ethnic coexistence.<sup>281</sup> Still, for many representatives of the ULSG, the role of the ICRC is reduced to the mere level of resolving conflicts between the communities.<sup>282</sup> According to these views, the work of the ICRCs in several municipalities consists only of ad-hoc meetings, when necessary.<sup>283</sup>

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270 Interview No. 63, Staro Nagorichane; Interview No. 12-a, Struga, March, 2011.

271 Interview No. 58, Chashka.

272 Interview No. 26-a, Kumanovo, March, 2011; Interview No. 52, Studenichani; Interview No. 61, Skopje;

273 Interview No. 61, Skopje.

274 Interview No. 52, Studenichani; Interview No. 28, Kumanovo.

275 Interview No. 52, Studenichani.

276 Interview No. 12-c, Struga, March, 2011.

277 Interview No. 28, Kumanovo.

278 Interview No. 57, Chashka.

279 Interview No. 52, Studenichani.

280 Interview No. 47, Gradsko.

281 Interview No. 50, Gradsko.

282 Interview No. 33, Karbinci; Interview No. 56, Chashka; Interview No. 30, Konche; Interview No. 39, Dolneni; Interview No. 30, Konche.

283 Interview No. 64, Staro Nagorichane. Interview No. 48, Gradsko.

The cases in which ICRCs undertake preventive or project activities are rare.<sup>284</sup> Certain project activities, mainly of the associations, help in creating conditions for working of the ICRC in certain municipalities.<sup>285</sup> However, the problems arise with the changes in the membership of the ICRC, especially after local elections and newly elected advisors, with which they lose the continuity in the work but also, the capacity that has already been built.<sup>286</sup>

## 6. Direct Democracy

Direct democracy suggests mechanisms for direct civic participation in the decision-making processes (regardless of the ethnic structure of a society), thus facilitating the process of consolidation of democracy by stimulating engaged and active citizenry.<sup>287</sup> However, the theoreticians of democracy alert that direct democracy is no guarantee for minority representation. Some characterize the model as a tyranny of the majority, while others see it as an antithesis of the consociational democracy as the most common form direct democracy takes – the referendum, applies the simple majority rule of 50% +1, clearly demonstrating the danger of outvoting of the small groups.<sup>288</sup> However, in the context of direct participation of citizens in the decision-making processes, the positive aspects should be tracked in long-terms, and namely in the process of raising the awareness of the citizens on the need for active participation in the public/political life and thus democratization of political culture, i.e. creation of a socially aware citizenry.

In Macedonia, according to the LLSG, citizens can participate directly in the decision-making processes through civic initiatives, assemblies and/or referendum on issues of local importance. However, forms of direct participation are barely used.

The existing legal provisions do not stimulate direct and effective participation of the members of the small(er) communities. Accordingly, the Council is obliged to review a civil initiative only if it is supported by at least 10% of the electoral body in the municipality (or the local self-government unit), and the same threshold is applied to the assemblies. For referendum a threshold of “at least 20% of the electoral body of the municipality” is applied. (See LLSG, Article 25-28)

In the City of Skopje it is noticed that entire municipalities are excluded from the decision-making processes (or the local self-government units), particularly on issues related to the so-called “Skopje 2014” project. The municipality of Chair respondents for example made

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284 For example, in the municipalities of Chashka and Chair, ICRCs organize different events and manifestations with purpose for the citizens to get to know each other and to eliminate the prejudice.

285 For example, the project “Model for efficient communication between the Commissions, the citizens and the organs of the local self-government” implemented by the Association “Common values” and the Metamorphosis Foundation in 2010/2011.

286 Interview No. 61, Skopje.

287 Theory of Direct Democracy, see: Cronin, Thomas E. *Direct Democracy: The Politics of Initiative, Referendum, and Recall*. Harvard University Press, 1989.

288 See: Barry, B. Review Article: Political Accommodation and Consociational Democracy. *British Journal of Political Science* 5(4), 1975: 477-505. Kriesi, Hanspeter. *Direct democratic choice: the Swiss experience*. Lanham: Lexington Books, 2005.

remarks on the negative influence on the inter-ethnic relations: neither the launching of the project was decided by consensus, nor it was reviewed by the Inter-Community Relations Committee. Thus, the project is not only considered as anti-constitutional, but also as a single-party and mono-ethnic one. An example of the effect of the exclusion of the local community and the lack of information for the public is the Skopje Fortress (Skopsko Kale or Kale Fortress) incident. Thus, for some of the respondents the destruction of the Skopje Fortress, which is a monument of significance for all the citizens, came as a consequence of exclusive decision-making process.<sup>289</sup>

Thus, the Community Forums, organized upon the initiative of ZELS, in cooperation with other associations and foundations, and financially supported by the Swiss Agency for Development and Cooperation, are a rare example of direct participatory mechanism. The Forums facilitate civic discussions so to include citizens in the decision-making processes on issues of local interest.<sup>290</sup> In the period 2006-2010, over twenty ULSG have applied and used the possibilities given through the Community Forums.<sup>291</sup>

Our data shows that this tool is considered positive, hence, some municipalities have institutionalized it i.e. the Community Forums are regulated through the statutory documents of the municipality.<sup>292</sup> Usually in focus are infrastructural<sup>293</sup> and public utilities<sup>294</sup> issues, however some municipalities open discussions also on their. Thus, the Community Forums are largely seen as an efficient tool for local community needs articulation.<sup>295</sup>

The main criticism towards the Community Forums is related to the financial structure.<sup>296</sup> Since the Swiss Agency pulled out as a donor, the application of the mechanism decreased, thus affecting its sustainability.<sup>297</sup> Nevertheless, the Community Forums as a rule of decision-making should be applied in the municipalities (or units of local self-government) with diverse local population.

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289 Interview No. 70-c, Chair.; Interview No. 70-b, Chair.; Interview No. 70-a, Chair.; Interview No. 70-d, Chair.

290 Interview No. 34, KARBINCI.

291 Association of the Units of Local Self-Government of the Republic of Macedonia. Handbook: Community Forums in 11 steps. [Заедница на единици на локална самоуправа. „Прирачник: Форум на заедницата во 11 чекори“]. Skopje, 2010. <<http://www.zels.org.mk/Upload/Content/Documents/Izdanija/Publikacii/MK/forumi%20na%20zaednicite%20mk%20za%20web.pdf>>. Last accessed 30 June 2011.

292 The interest of the citizens for the forums of the communities was enormous. The municipality of Radovish has envisaged an item in the budget of the municipality in the amount of 200,000 denars for provision of the future work of the forums of the communities (Interview No. 16, Radovish, March, 2011); With the statutory amendments, the Forums of the communities also acquired an institutionalized support from the organs of the local self-government (Interview No. 65-a, Gostivar)

293 River bank in Gostivar. (Interview No. 65-a, Gostivar); 2 capital investments from infrastructural character (Interview No. 48, Grasko)

294 Vehicle for public utility services (Interview No. 37, Dolneni); Interview No. 31, Konche);

295 Interview No. 37, Dolneni.

296 Interview No. 57, Chashka.

297 Interview No. 67, Gostivar.

In conclusion, Macedonia does not have sufficiently developed forms and instruments for inclusion of the citizens, and particularly of the members of minorities, thus negatively affecting effective political participation. The high thresholds for direct civic initiatives, as well as the inertia of the administration towards the same, make the Community Forums a sole, yet insufficient, mechanism for civic participation in the political life, including issues directly affecting the local communities. Moreover, the nonexistence of forms of direct participation has an unfavourable effect on the other mechanisms for effective political participation of the small(er) ethnic communities.





# Conclusion

## V. Conclusion

*As the study clearly shows,* the effective political participation of the small(er) ethnic communities in local self-government in Macedonia, after the signing the OFA, is, for the first time, shaped as a principle in general; i.e. it is guaranteed by the different laws and bylaws resulting from the implementation of the OFA provisions.

Combining the methods of reviewing the existing literature and analysis with field research, the study contributes with several new, empirically supported findings. The consociational package for managing ethnic diversity, in the form that has been applied in Macedonia, formally enables only certain groups in the society to have equal status and representation, and thus, maximum protection and recognition. The small(er) ethnic communities are only partially included in the process, and are in a subordinated position to the two (more) numerous groups.

Additionally, the OFA is a progress in the legal regulation and the implementation of the measures that provide consistent application of the principles of non-discrimination and equitable representation of the small(er) ethnic communities, putting aside the argument that the threshold of 20% *de facto* guarantees proportional representation only for certain communities and in certain cases. However, the frequent lack of political will and/or financial resources, the party affiliation of the structures in the public sector, and by that in the public policies, as well as the lack of information of the citizens and the state administration at the central and local level impede the process of full application of the principles, and thus, of effective participation of the small(er) communities in the political life of the country. Additional destabilizing factors for the provision of equitable and effective representation of the small(er) ethnic communities are the lack of reforms in the public sector, the slow implementation of the laws (particularly the lack of reforms in the judiciary system), and the inappropriate mechanisms for communication between the different actors involved in the process horizontally - between the different actors at the central level, and vertically - between actors at the central and local level. Hence, the members of the small(er) ethnic communities, which are traditionally subject to ethnic, political and economic discrimination, i.e. the Roma population, are in the most disadvantaged position.

In conclusion, the elements of the OFA that establish a more effective representation of the small(er) ethnic communities provide for a solid legal basis for equality and inter-ethnic stability in a multiethnic and

multicultural Macedonia. However, in order for the peaceful coexistence to become a reality through the maintaining of the cultural specificities of the small(er) ethnic groups and their active inclusion in the public life and beyond, more than just laws on paper is necessary. It is only through cooperation and a more active engagement of all actors included in the process, that the legal norms will be transformed into practice and become everyday reality. A necessary precondition for this is a strategic approach towards human rights, with a special focus on the non-discrimination and the necessary affirmative action, as a basis for the amendment of laws and policies.. In light of this, one recommendation is to open a wider public consultative process for the adoption of an Action Plan for Human Rights in the Republic of Macedonia (including clearly stated fiscal implications and financial plans) that would result in the adoption of a multiannual strategic document. This would provide for the building of a legal and policy framework where human rights would be at the centre, taking into consideration the responsibilities for respecting, protecting and fulfilling human rights standards that Macedonia has committed to through the international legal framework on human rights, while at the same time disabling the backward processes and strengthening the legal security.



# Annexes

*Annexes*

## Annex I:

### List of respondents

(Field research: 14th of February – 15th of April 2011)

No.	Name and surname	Position	Organization/Institution
1	Abdula Bajramovski	Mayor of the municipality of Dolneni	Municipality of Dolneni
2	Adnan Ljapo	Member of the Commission for Inter-Ethnic Relations from the Municipality of Struga	Municipality of Struga
3	Azem Dauti	President of the Council of the Municipality of Chair	Municipality of Chair
4	Alberto Zenil	Member of the Presidency	NGO, Association of Egyptians of Ohrid, Ohrid
5	Aleksandra Bojadzieva	Independent expert	Member of the Advisory Committee on the Framework Convention for the Protection of National Minorities, Council of Europe
6	Andrijana Kolevska	Head of sector for international cooperation	Municipality of Kumanovo
7	Ardita Dema	Deputy Executive Director	Association of the Units of Local Self-Government
8	Asan Jusin	Member of the Council of the municipality of Karbinci	Municipality of Karbinci
9	Ashmet Elezovski	Manager	NGO, Roma National Centre, Kumanovo
10	Biljana Doneva	Coordinator of the Inter-Community Relations Commission of the Municipality of Chashka	Municipality of Chashka
11	Birdjan Mehmedov	Member	NGO, Association for Roma Rights, Shtip
12	Boban Zdravkovski	President of the Inter-Community Relations Commission of the Municipality of Gostivar	Municipality of Gostivar
13	Bojancho Stefanov	President of the Council of the Municipality of Karbinci	Municipality of Karbinci
14	Vasil Bogdanski	Mayor of the Municipality of Karbinci	Municipality of Karbinci
15	Vene Tasev	Secretary of the Municipality of Chair	Municipality of Chair
16	Vesna Shkortova	Executive Director	NGO Foundation for Local Development and Democracy "Focus", Veles
17	Viktor Cvetkovski	President of the Council of the Municipality of Kumanovo	Municipality of Kumanovo

No.	Name and surname	Position	Organization/Institution
18	Violeta Boshkova	President	NGO Association of persons with special needs, Gradsko
19	Vladimir Stojanovikj	Head of Unit for Project Management and International Cooperation	Agency for Realization of the Rights of the Communities
20	Gligur Kocev	Mayor of the Municipality of Gradsko	Municipality of Gradsko
21	Goran Andovski	President	NGO Citizen's Association "Galebi", Chashka
22	Dashmir Osmani	Office for local economic development and project implementation	Municipality of Gostivar
23	Dimche Kanevche	Member of the project team	NGO Youth Council, Ohrid
24	Dragica Poposka	President	NGO Women's Association "Ezerka", Struga
25	Dushko Jokovchevski	President of the Council of the Municipality of Ohrid	Municipality of Ohrid
26	Ejup Abazi	Head of human resources sector	Municipality of Studenichani
27	Eldafar Jusufi	Assistant in the Office for Communication with the Citizens	Municipality of Dolneni
28	Elena Temelkovska	Member of the Council of the Municipality of Gradsko	Municipality of Gradsko
29	Elizabeta Cvetkovska	Head of Project Activities Sector	Municipality of Kumanovo
30	Enis Omerov	President of the Equal Opportunities Commission	Municipality of Radovish
31	Enise Demirova	President	NGO Roma Association "Cherenja", Shtip
32	Erol Ademov	Officer for relations with the communities	Municipality of Shtip
33	Esad Rahovikj	President	NGO Bosniak Association, Gradsko
34	Zhaklina Jovanova	President of Inter-Community Relations Commission	Municipality of Staro Nagorichane
35	Zhaneta Chaushevaska	President of the Council of the municipality of Gradsko	Municipality of Gradsko
36	Zija Saidov	President of the Inter-Community Relations Committee	Municipality of Konche
37	Zlatko Jankulov	Head of Public Relations and Project Activities Sector	Municipality of Konche
38	Zorancho Aleksov	Mayor of the municipality of Shtip	Municipality of Shtip
39	Ivana Davidovska	Member	NGO Centre for Intercultural Dialog, Kumanovo
40	Ivanka Sokolova	President	NGO Association of improving the status of women in Macedonia "Women Action", Radovish
41	Jasna Petrovska	Coordinator	NGO Multiculturalism Network, Skopje

<b>No.</b>	<b>Name and surname</b>	<b>Position</b>	<b>Organization/Institution</b>
42	Kadir Salih	Deputy Director	Agency for Minority Rights Realization
43	Katerina Vasileska	Member of the project team	NGO Agency for local democracy, Struga
44	Kenan Abdi	President of the Inter-Community Relations Commission and member of the Council of the Municipality of Studenichani	Municipality of Studenichani
45	Kujtim Usejini	Member of the Council of the Municipality of Ohrid	Municipality of Ohrid
46	Lejla Alilovska	Coordinator of the Inter-Community Relations Commission	Municipality of Chair
47	Lindita Rexhepi	Member	NGO Centre for Intercultural Dialog, Kumanovo
48	Ljubica Petrova	Member	NGO Women's Association "Denica", Radovish
49	Ljubomir Frchkoski	Professor	University "Ss. Cyril and Methodius", Faculty of law "Justinian Prvi", Skopje
50	Ljuksel Bajram	Head of civil and military defense sector	Municipality of Ohrid
51	Marjan Dailovski	President of the Council of the municipality of Staro Nagorichane	Municipality of Staro Nagorichane
52	Marjancho Todorovski	State Secretary	Ministry of labour and social policy of RM, Government of the Republic of Macedonia
53	Mekjail Shakirov	President of the Inter-Community Relations Commission	Municipality of Chashka
54	Miodrag Jovanovikj	Mayor of the municipality of Staro Nagorichane	Municipality of Staro Nagorichane
55	Mirjana Maleska	Professor	South East European University, Skopje
56	Muzafer Saliu	President	NGO European Link Centre, Gostivar
57	Muhamed Tochi	President	NGO Humanitarian and Charitable Association of Roma "Mesechina", Gostivar
58	Natasha Sokolova	Member	NGO Citizen's Association, Karbinci
59	Naum Dunoski	Coordinator	Association of Croats from the republic of Macedonia, Struga branch, Struga
60	Nevzat Imeroski	President of the Inter-Community Relations Commission	Municipality of Dolneni
61	Ramadan Amzov	President of the Council of the Municipality of Chashka	Municipality of Chashka
62	Raman Demirov	President	NGO Roma Association "Sao Roma", Shtip
63	Samet Skenderi	Executive director	NGO Initiative for social change (ISC), Skopje

<b>No.</b>	<b>Name and surname</b>	<b>Position</b>	<b>Organization/Institution</b>
64	Sashko Nikolov	President of the Council of the municipality of Radovich	Municipality of Radovich
65	Sefgani Osmanovski	President of the Council of the municipality of Dolneni	Municipality of Dolneni
66	Silva Peshikj	Human Rights Advisor	Office of the permanent coordinator of the UN in Macedonia, UN
67	Simon Ilievski	Spokesman and head of sector for public relations	Municipality of Ohrid
68	Slobodan Novakovikj	Member of the Inter-Community Relations Commission	Municipality of Struga
69	Stojan Lazarev	Mayor of the municipality of Konche	Municipality of Konche
70	Sunchica Kostovska Petrovska	Head of Project "Under the Same Sun"	Foundation "Institute Open Society Macedonia", Skopje
71	Tanas Panoski	Member of the Inter-Community Relations Commission	Municipality of Struga
72	Teuta Agai Demjaha	Coordinator of the international cooperation sector	Municipality of Chair
73	Fati Iseni	Mayor of the Municipality of Studenichani	Municipality of Studenichani
74	Hajrije Elezi	Deputy Spokesperson	Secretariat for Implementation of the Ohrid Framework Agreement, Government of the Republic of Macedonia
75	Hajrije Rexhepi	President	NGO Common Values, Skopje
76	Xhevad Ademi	President of the Inter-Community Relations Committee	Parliament of the Republic of Macedonia
77	Xhevad Rakipovski	Member of the Inter-Community Relations Commission	Municipality of Struga
78	Shazi Ljutvi	President	NGO Humanitarian Organization "El Hital", Studenichani branch, Studenichani
79	Shpend Kaproli	Mayor's cabinet	Municipality of Gostivar

**Annex II:**

**Equitable representation of the ethnic communities in the municipal administration in the municipalities where the field research had been implemented**

Municipality	Category	Review	Total population	Ethnic affiliation									
				Macedonians	Albanians	Turks	Roma	Vlachs	Serbs	Bosniaks	Other		
Gostivar	Population	Number	81.042	15.877	54.038	7.991	2.237	15	160	39	685		
		Percentage	100%	19,59%	66,68%	19,86%	2,76%	0,02%	0,20%	0,05%	0,85%		
	Employees in the municipality	Number	107	32	69	4	2	0	0	0	0		
		Percentage	100%	29,9%	64,5%	3,7%	1,9%	0%	0%	0%	0%		
Gradsko	Population	Number	3.760	2.924	125	71	127	0	23	465	25		
		Percentage	100%	77,77%	3,32%	1,89%	3,38%	0%	0,61%	12,37%	0,66%		
	Employees in the municipality	Number	14	14	0	0	0	0	0	0	0		
		Percentage	100%	100%	0%	0%	0%	0%	0%	0%	0%		
Dolneni	Population	Number	13.568	4871	3616	2597	13	0	16	2380	75		
		Percentage	100%	35,90%	26,65%	19,14%	0,10%	0%	0,12%	17,54%	0,55%		
	Employees in the municipality	Number	17	10	2	3	0	0	0	0	3		
		Percentage	100%	58,8%	11,8%	17,6%	0%	0%	0%	0%	17,6%		
Karbinci	Population	Number	4.012	3.200	0	728	2	54	12	0	16		
		Percentage	100%	35,90%	26,65%	19,14%	0,10%	0,00%	0,12%	17,54%	0,55%		
	Employees in the municipality	Number	18	10	2	3	0	0	0	0	3		
		Percentage	100%	58,8%	11,8%	17,6%	0%	0%	0%	0%	17,6%		

Municipality	Category	Review	Total population	Ethnic affiliation									
				Macedonians	Albanians	Turks	Roma	Vlachs	Serbs	Bosniaks	Other		
Konche	Population	Number	3,536	3,009	0	521	0	0	3	0	3	0	3
		Percentage	100%	85,10%	0,00%	14,73%	0%	0%	0,08%	0%	0,08%	0%	0,08%
	Employees in the municipality	Number	11	10	0	1	0	0	0	0	0	0	0
		Percentage	100%	90,9%	0%	9,1%	0%	0%	0%	0%	0%	0%	0%
Kumanovo	Population	Number	105,484	63,746	27,290	292	4,256	147	9,062	20	671	20	671
		Percentage	100%	60,43%	25,87%	0,28%	4,03%	0,14%	8,59%	0,02%	0,64%	0,02%	0,64%
	Employees in the municipality	Number	122	97	15	0	0	0	8	0	2	0	2
		Percentage	100%	79,5%	12,3%	0%	0%	6,6%	0%	6,6%	0%	1,6%	1,6%
	Population	Number	55,749	47,344	2,962	2,268	69	323	3,66	29	2,388	29	2,388
		Percentage	100%	84,92%	5,31%	4,07%	0,12%	0,58%	0,66%	0,05%	4,28%	0,05%	4,28%
Ohrid	Employees in the municipality	Number	141	130	1	5	0	3	1	0	1	0	1
		Percentage	100%	92,2%	0,7%	3,5%	0%	2,1%	0,7%	0%	0,7%	0%	0,7%
	Population	Number	28,244	23,752	8	4,061	271	26	71	1	54	1	54
		Percentage	100%	84,10%	0,03%	14,38%	0,96%	0,09%	0,25%	0%	0,19%	0%	0,19%
Radovish	Employees in the municipality	Number	60	59	0	0	0	0	0	0	0	0	1
		Percentage	100%	98,3%	0%	0%	0%	0%	0%	0%	0%	0%	1,7%
	Population	Number	4,840	3,906	1	0	1	0	92,6	0	6	0	6
		Percentage	100%	80,70%	0,02%	0%	0,02%	0%	19,13%	0%	0,12%	0%	0,12%
Staro Nagorichane	Employees in the municipality	Number	24	11	0	0	0	0	13	0	0	0	0
		Percentage	100%	45,8%	0%	0%	0%	54,2%	0%	0%	0%	0%	0%
	Population	Number	63,376	20,336	36,029	3,628	116	656	106	103	2,402	103	2,402
		Percentage	100%	32,09%	56,85%	5,72%	0,18%	1,04%	0,17%	0,16%	3,79%	0,16%	3,79%
Struga	Employees in the municipality	Number	92	39	45	2	0	3	0	0	3	0	3
		Percentage	100%	42,4%	48,9%	2,2%	0%	3,3%	0%	0%	3,3%	0%	3,3%

Municipality	Category	Review	Total population	Ethnic affiliation									
				Macedonians	Albanians	Turks	Roma	Vlachs	Serbs	Bosniaks	Other		
Studentichani	Population	Number	17.246	309	11.793	3.285	73	0	14	1.662	110		
		Percentage	100%	1,79%	68,38%	19,05%	0,42%	0%	0,08%	9,64%	0,64%		
	Employees in the municipality	Number	15	0	12	1	0	0	0	2	0		
		Percentage	100%	0%	80,0%	6,7%	0%	0%	0%	13,3%	0%		
Chair	Population	Number	64.773	15.628	36.921	4.500	3.083	78	621	2.950	992		
		Percentage	100%	24,13%	57%	6,95%	4,76%	0,12%	0,96%	4,55%	1,53%		
	Employees in the municipality	Number	60	16	39	4	1	0	0	0	0		
		Percentage	100%	26,7%	65,0%	6,7%	1,7%	0%	0%	0%	0%		
Chashka	Population	Number	7.673	4.395	2.703	391	0	1	55	67	61		
		Percentage	100%	57,28%	35,23%	5,10%	0%	0,01%	0,72%	0,87%	0,79%		
	Employees in the municipality	Number	23	20	2	0	1	0	0	0	0		
		Percentage	100%	87,0%	8,7%	0%	4,3%	0%	0%	0%	0%		
Shtip	Population	Number	47.796	41.670	12	1.272	2.195	2.074	297	11	265		
		Percentage	100%	87,18%	0,03%	2,66%	4,59%	4,34%	0,62%	0,02%	0,55%		
	Employees in the municipality	Number	95	85	0	1	2	3	0	0	0		
		Percentage	95	93,7%	0%	1,1%	2,1%	3,2%	0%	0%	0%		

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