

## LOCAL SELF-GOVERNMENT: REPUBLIC OF BULGARIA/REPUBLIC OF MACEDONIA – PARALLELS

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### ABSTRACT:

An attempt is made in the article for the conducting of a comparative analysis according to the constitutions of the two countries and the relevant legislative acts in the field of local self-government. An emphasis is placed on the differences, which highlight the time-space variations between the Republic of Bulgaria and the Republic of Macedonia: the republic of Bulgaria - a member state of the European Union /EU/ since 2007, and the republic of Macedonia, although being a candidate for an associate member of the EU since 2004, finding itself outside its boundaries due to unsettled historical/ideological matters. Main research methods - method of the comparative legislative analysis, method of the political-sociological analysis.

**Keywords:** Local self-government, Constitutions of the Republic of Bulgaria and the Republic of Macedonia, European Charter of Local Self-Government, principle of decentralization, principle of centralization.

### POLITICAL ENVIRONMENT

The sixth regular local elections are held in the Republic of Macedonia /RM/ during the month of October 2017. 1 million and 735 thousand citizens are entitled to vote and 19 parties and coalitions are registered for participation in them. A convincing victory is won by the candidates of the SDSM /Social Democratic Union of Macedonia/ party, led by Z. Zaev - the party wins in 56 municipalities from a total of 80, precisely as many as The VMRO-DPMNE party, with its leader at the time N. Gruevski reported for a victory in 2013. The candidates of the coalition partners of SDSM - the Democratic Union for Integration /DUI/ of Ali Ahmeti and the Alliance for Albanians of Ziadin Sela won the confidence of the electorate in ten and three municipalities respectively. These election results prove the consensus reached by the two main ethnic minorities in the RM for development of the country along the path of the European and Euro-Atlantic integration. The origins of the process lie in the Ohrid Framework Agreement - 2001. The then main arrangement is introducing the right and obligation at a municipal level, if at least 20% of the population has a mother tongue that is different than the "Macedonian language", i.e. Albanian, the latter to be a "official" language in the communication at a local level.[1] This position also entails an amendment of the Constitution of the RM, adopted in 1991. This is Amendment No. 5, which entirely substitutes Art. 7 of the Constitution. In fact in the cited amendment this second "official language" is not directly called Albanian neither; in this case the only criterion for orientation with regard to the ethnic composition of the municipalities, in which a second "official language" after the "Macedonian language" is being introduced, remains the demographic one. The last

population census in the country took place in 2002. According to the results from it the ethnic Albanians in the RM constitute around 25% of the population, and around 10% are Turks and Gypsies. However what is important in this case is the circumstance that during the military conflict around 800 thousand refugees entered Macedonia from Kosovo; it is assumed that around 150 thousand stayed permanently in the RM.

In total for the period 2001-2011, 32 amendments were made to the Constitution of the RM. A particularly important one is Amendment No. 16, which has to replace par. No. 5 of Article 114. It stipulates expressly that the laws on local funding, local elections, on the municipal boundaries and on the city of Skopje to be enacted by a majority of those present, “who are not part of the communities that are a majority in the RM”, i. e. “Macedonian” and Albanian.

It is also notable that Art. 1,2 and 3 of the Constitution of the RM are defining it as a “sovereign, independent, democratic and social state”, i. e. the fundamental law of the state does not expressly define its form of government as a “unitary” one. In the Preamble to the Constitution, which has only a theoretical value, it is stated that this is a “national state of the Macedonian people...”

1.1. Therefore, the main difference between the constitutions of the RM and the Republic of Bulgaria /RB/ is the uncertainty of the nature of the form of government in the first one and the guaranteed unitary nature of the state in the second one. This constitutional “deficit” sends a message of instability and uncertainty; the problem is whether this is an incidental or a deliberately laid down “omission” in the Constitution of the RM and after the Ohrid Framework Agreement - 2001. In that context the “Tirana platform” - 2016, as well as the law on the use of languages, adopted in the month of February 2018 in the RM should be assessed as a planned and long-term strategy from “external political players” as early as 1991 towards a federalisation of the state.

## **ADMINISTRATIVE ENVIRONMENT**

In the Constitution of the RM, Chapter V refers to the local self-government. It consists of Art. 114, 115, 116 and 117. What is notable in Art. 114 is the use of two word groups - “local self-government” and “neighbourhood self-government”. They are not synonyms; it follows from the text of the second and third paragraphs of this article, that the constitutionally guaranteed local self-government “unit” are the municipalities. At the same time Art. 3 stipulates that within municipalities “forms of neighbourhood self-government” may be established. The legislator introduces an ambiguity for unidentifiable reasons.

Secondly, the Constitution of the RM does not introduce obvious regulations of local self-government such as “bodies of local self-government”, property of the municipality, the legal status of the municipality, i.e. constitutional regulations, which are constitutional regulations of the Bulgarian Constitution - 1991; resulting from requirements of the European Charter of Local Self-Government - 1985. In the Constitution of the RM the forms of direct participation of the citizens in the local self-government are not marked as well; in the Bulgarian constitution they are listed - bodies of local self-government, a referendum, a general meeting /Art. 136, par. 1/. In both countries the representative bodies in the territorial units - the councils of the municipality/municipal councils, are directly elected by the population, as are the mayors. In the Constitution of the RB the option is provided for the mayor to be elected by the municipal council, i.e. indirectly. A

main principle of election is a universal, equal and direct suffrage by secret ballot for all citizens who have reached the age of 18.

The inadequacies in the constitutional regulations on local self-government in the RM are to a certain extent compensated by the state legislation in that field. The more-important legislative acts are as follows: the Law on Territorial Organization of the Local Self-Government in the Republic of Macedonia /2004/, the Law on the City of Skopje /2004/, the Law on Local Self-Government /2002/, and the Law on Local Elections /2004/, the Law on Financing of the Units of Local Self-Government /2004/. According to the Law on Territorial Organization of the Local Self-Government in the Republic of Macedonia /2004/ and the Law on the City of Skopje /2004/ the territory of the republic is divided into 80 municipalities. The two laws are repealing the former territorial division of the RM into 124 municipalities, laid down by a law from 1996 as well. Before that, in 2002, the Sobranie /the Assembly/ of the RM adopted a Law on Local Self-Government, which replaced the Law on Local Self-Government of 1995. There is also a “Ministry of Local Self-Government” in the RM, which corresponds according to its aims and policies to the Bulgarian Ministry of Regional Development.

The territory of the republic /RM!/ has been divided in 1996 into 8 statistical regions. These are - Vardar, Eastern, Pelagonia, Polog, Northeastern, Skopje, Southeastern and Southwestern. According to the Law on Territorial Organization 80 municipalities are formed /2008/, subdivided into “urban communities”, i.e. urban on the one hand and local communities - on the other, or “rural”. Or: municipalities with a municipal centre - a city and municipalities with a municipal centre - a “populated place” or a village. As a result 28 municipalities are formed with a predominantly Albanian population, 4 municipalities with a predominantly Turkish population, one municipality - with a predominantly Roma population, and one municipality - with a predominantly Serbian population; the other municipalities are with a predominantly “Macedonian population”.

The main question that arises in the state and that is in the centre of the debates which have overwhelmed the public opinion and the social networks in connection with that law is the impact of the process of decentralization<sup>18</sup>, as a “prevention of ethnic conflicts”; the latter are viewed as a “No. 1 threat” for “the unitary nature of the state”, although it - this “unitary nature”! does not explicitly represent a constitutional regulation according to the Constitution of the RM - 1991. Or - the question of the “unitary nature” of the state RM is not constitutionally postulated; it is a matter that is ideological and political in essence, which has its origins in the date 2<sup>nd</sup> of August, 1944, namely: “field designing of the last project of the Comintern” and a creation of a Southern Federation of the Slavs on the Balkan Peninsula ! ; the problem is not a part of the idea of the “shared authority”, i.e. widening the foundation of the vertical partitioning of authority or the relationship “central authority-local self-government”, which results from the Ohrid Framework Agreement - 2001; as is known, the agreement is drawn up along ethnic lines and seeks a balance between the two largest communities in the state; it actually sets the trajectory of a future cantonisation of the republic. It will correspond to the multicultural nature of the “Macedonian people” - an objectively non-existent ethno-confessional community in the Balkans...

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<sup>18</sup> In D. Treisman’s paper /2004/ - „Decentralization and the Quality of Government“ five aspects of the principle of decentralization are introduced: structural, decision decentralization, resource, electoral, institutional. Cited after: “Decentralization and integration: regional and local government”., Sofia, p. 9, 2004.

In this context the Constitutional Court of the RM in accordance with its Constitution will have to take up new responsibilities, mostly handing down judgments regarding initiatives of the councils of the municipalities and of the citizens for assessment of the legality of the legislative acts of the various ministries and of the other state administration bodies /Art. 110, par. 5/. An administrative and territorial result which until now does not show a recognizable public practicing...

The local self-government system in the RM is one-tier; on average each municipality has a population of around 24 thousand people, and its average area amounts to around 306 square kilometers. No administrative entities exist above the municipal level, in contrast with the provinces in the RB or the so called regions; In the RB in that sense the local self-government system is two-tier. The idea of the figure and role of the public mediator - the ombudsman does not appear in the normative documents regarding the local self-government in the RM either. This matter is extensively covered in the Local Self-Government and Local Administration Act of the RB - Art. 21a.

Another specific characteristic of the local self-government in the RM is the existence of two regulations - a "statut" (statute) /in Bulgarian standard language - ustav/ and a "delovnik" (statutes) /in Bulgarian standard language - pravilnik/, in which "normative activities" of the municipalities are laid down, instead of them being part of the text of the law itself. In 2006 in the Internet "pravila" (rules) for creating a "statut" of the municipalities in the RM were also published, a practice which is disputable.

The Law on Local Self-Government in the RM also includes a chapter, devoted to "the participation of citizens in the decision-making process at a local level". This matter is discussed in articles 25 to 30 of the cited legislative act. The provisions of Art. 14 of the law are also on that level, dealing with the "intermunicipal" activities and cooperation in the RM. According to the website of the "Community of the local self-government units", which has a "non-governmental organization" status since 1972,!, and all 80 municipalities of the republic are participating in it, the principle of this participation is not indicated, i.e. the principle may be both a "totalitarian" one - entirely "centralized", and a "decentralized" one, i.e. a voluntary one. The "Community" claims to be a new form of civic participation - a "forum of the community"! although it does not at all correspond to the principles of the Constitution of the RM - 1991, which is not even mentioned as a "source material" in the cited law [2].

In the month of March 2017 in Bitola, RM, a forum was held on the topic of: "European prospects for the local self-government"; the forum is also active in the publishing of printed materials in connection with the European funds and their logistics at a local level. In the Local Self-Government and Local Administration Act of the RB the matter is addressed by Art. No. 9 with two forms - a national and a regional association of the municipalities; two principles of association are indicated - a voluntary approach to association and an accomplishing of tasks of common interest. On this note the project of the Ministry of Regional Development and Public Works of the RB, titled "Strategy for Decentralization /2016-2025/" is cause for reflection as well.

The texts of the two laws on local self-government, of the RM and the RB respectively, concerning the number of members of the municipal councils, i.e. Art. 34 and Art. 19. The number of the municipal councilors in the RM is within the standard 9-33 councilors, with the standard of increase of the number of the population being around 20 thousand people and it corresponds to the relevant standard for their representation in the councils of the municipality /urban and rural/. In Art. 34 the city of Skopje is not explicitly set out as a capital of the republic, the city comprising 10 municipalities according to the law and

numbering over 583 thousand people. In the Bulgarian law the lowest numeric value of representation is 11 municipal councilors, and the highest value /Capital Municipality/ - 61 councilors.

2.1. A second main difference with respect to the administrative environment in the RM in connection with the local self-government matters and the same topic in the RB has to do with the prevalence of regulations instead of completeness of the law.

## **PRINCIPLES OF LOCAL SELF-GOVERNMENT A PARALLEL: THE RM AND THE RB**

The main difference in the application of the principles of decentralization, deconcentration and subsidiarity, laid down in the European Charter of Local Self-Government - 1985, depends on the nature of the relevant examined polity according to the established Constitution of the state. By definition, with regard to the unitary states - in this case the RB, local self-government is “colliding” with the objective necessity of expanding the functions and responsibilities of local self-government; with the federal polity - the possible future constitutionally laid down polity of the RM, local self-government suggests a high level of independence for fulfilling the responsibilities of the relevant local authorities. As far as at the present moment in the RM this process is in a state of transition, and the relevant legislative acts, concerning the problem, as well as the Constitution of the republic are not fully taking it into account, here one can only offer the following general comments.

Decentralization as a principle of government is a fundamental part of the process of democratization of a society. It is a means for distribution of “responsibilities, rights and resources between the various levels of governance and a bringing of the decision-making process closer to the citizens”. Decentralization is connected to and is practically expressed as a “delegation of powers” to the local level of self-government; in this way the state verifies the quality and effectiveness of the services that are being provided to the citizens at the local level, designating only the standard and the legal guarantees of justice.

The question of financial decentralization is a painful subject to both countries. The essence of local self-government requires for the state to transfer the package of “powers, competences and responsibilities” to the local level in that field; when this has not been done, and just an “availability of competences in the law” is being noted, there is only a “territorial decentralization”. It is distinguished only for a “certain volume of transferred powers” i.e. a delegation of powers for independent solving of individual problems at a local level. In both states the local self-government does not by definition have at its disposal an independent legislature and judiciary i.e. it does not have its own legislative administrative and financial activity. Therefore the state retains as its power the administrative and judicial control over the local self-government. In the RB because of that in the scientific legal literature the concept of “specific policy of decentralization” is being introduced, which covers three aspects: political, administrative and financial. In this context the question of the intrinsic “mechanisms of the decentralized systems” is also being examined - transparency of the management system, system for assessment of the quality of the provided services, civic participation and control, independent monitoring.

The principle of subsidiarity views local self-government as “a fundamental political institution, responsible to the citizens and the law for the quality and effective provision

of services”; this principle is closely connected and relating to the administrative capacity building at a local level.

In the RB the question of the administrative legal capacity between the central and the local levels is resolved with the Administration Act /1998:2017/. No similar law was found in the “mk” web space to date; what is available here is only a law on the general administrative procedure /2008/ and a law on the administrative disputes.

### **CONCLUSIONS:**

- At present in the RM the policy of prevention of political conflicts based on ethnicity is prevailing at the local level;
- The process of decentralization in the RM – an institutional problem, here is not yet out of the stage of political and ideological confrontation;
- There are also no legal regulations that could serve as a “regulator” of the relations between the central level of authority and the local self-government;
- Local self-government in the RM continues to be in a “process of transition” to a complete federalization of the RM. This definitely affects the economic and political image and authority of the state RM on the international stage. The principle of centralization is definitely a leading one in relation to the principle of decentralization. The legislative activity in the RM is lagging behind the corresponding European framework in the field of local self-government.

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