Consociational experiments in the Western Balkans: Bosnia and Herzegovina and Macedonia

Slaviša Orlović
Professor, Faculty of Political Sciences
University of Belgrade
slavisa.orlovic@fpn.bg.ac.rs

Abstract

This paper analyses the introduction and functioning of certain consociational elements in Bosnia and Herzegovina and in Macedonia. These states share the common experience within the SFRY and they both emerged from its dissolution. The Dayton Peace Accords of 1995 and the Ohrid Agreement of 2001 terminated the conflict which had resulted from deep divisions within these societies. Bosnia and Herzegovina is composed of segments of Bosniaks, Serbs and Croats, accompanied with Muslim (Islamic), Orthodox and Catholic religions. In Macedonia the Macedonian and Albanian segments are dominant, accompanied with Orthodox and Muslim religions as well as with different languages. While BiH is institutionalized with a high level of decentralization of two entities, the Federation and the Republic of Srpska, with federal elements, the solutions offered in Macedonia remained within the framework of a unitary state. The horizontal division of power is characterized by a kind of proportional representation and power-sharing. The Dayton and Ohrid Agreements left aside the guarantees for protection of smaller national communities. The choice of this model was rather under the external than under the internal influence. The solutions, initiated mostly from outside, led to termination of conflicts, however without producing functional states. The example of Bosnia and Herzegovina and Macedonia mostly confirms certain critiques addressed to the consociational model of democracy. Existence of actual economic problems, increase of unemployment and corruption cannot be directly put into connection with consociational arrangements. An impression is obtained that (constitutional) patriotism is rather reduced to one's own entity or ethnic group than related to the state as a whole. Prevention of conflicts has been obtained. Whether this is their freezing or regulation and to what extent the solutions are (self)sustainable, the time will show.

Key words: consociational democracy, power-sharing, veto, segmented cleavages

Two of the states that emerged from the dissolution of Yugoslavia, Bosnia and Herzegovina and Macedonia, are said to have more elements of consociational democracy than the others. The central issue in this paper are consociational elements contained in the Dayton and Ohrid agreements, and hence the states which these documents pertain to, as well as the implications and effects thereof. I shall consider the starting theoretical conceptions, the application of some consociational elements in these states and finally I shall give an assessment of their effects. The starting point for the analysis is the fact that theoretical conceptions are frequently rather politicized than critically challenged (Mirjana Kasapović).

Theoretical framework

The institutional design of deeply divided societies has two traditions - consociational (Arendt Lijphart) and centripetal (Donald Horowitz, Benjamin Reilly). This text shall primarily focus on the former one.

The term "consociation" (*consociatio*) denotes living together of people with different ethnic affiliations (language, religion etc). Consociational ideas are not new. Arend Lijphart introduced the term consociation in late 1960s, relying on the Johannes Althusius' term *consociacio*. Lijphart offers the consociational model as optimal for plural (subculture) societies having possibly multiple social cleavages and divisions: religious, ideological, linguistic, cultural, racial or ethnic. This model of democracy is named consociational (in the *Democracy in Plural* Societies), consensual (in the *Models of Democracy)* and power-sharing democracy. According to Lijphart, it is hard but not impossible to achieve and maintain a stable democratic government in a plural society (Lijphart 1992: 9). Consociation is both an empirical and a normative model. Arend Lijphart derives the empirical consociational model of democracy from the "case study" of the Netherlands, to later continue with Switzerland, Belgium and Austria and finally recommend this model as appropriate to all societies. Common for the above mentioned states is that they are heterogeneous societies, divided on various bases. In Switzerland there are 25 cantons with three linguistic regions (German, Italian and French). In Belgium there is a division between Flemings who speak Flemish (Catholics) and Walloons who speak French

(anti-clerical). In Austria there is a historical division according to the religious beliefs and ideology, regions. In Netherlands there is a division according to the religion and ideology which produces four blocs (Catholic, Calvinist, Liberal and Socialist). In plural societies which are sharply divided on religious, ideological, linguistic, cultural, ethnic or racial bases into a sort of sub-societies with own political parties, the majority (Westminster) democracy is not appropriate. The rule of majority in such circumstances is dangerous as minorities are permanently deprived from adequate representation and access to power. Due to exclusion or feeling of discrimination their loyalty to the regime can be lost. According to Lijphart, consociational model of democracy has following important characteristics: 1. Executive power sharing in broad coalition cabinets; 2. Executive-legislative balance of power without resignation of the government; 3. Multiparty system (not two-party); 4. Proportional representation; 5. Interest-group corporatism; 6. Federal and decentralized government. The power is shared between the central (federal) government and the federal units in the composition thereof; 7. Strong bicameralism; 8. Constitutional rigidity; 9. Judicial control (revision); 10. Independence of central bank (Lijphart 2003: 97-105).

According to Robert Dahl, the consociational model of democracy requires favorable conditions (Dahl 1999: 348). First, political elites must believe that consociational arrangements are absolutely desirable and feasible and they also must have knowledge and motives to implement them. Besides, there is an atmosphere and belief that conflicts with catastrophic consequences are the alternative to the consociational model. The tradition which favors reconciliation, mutual adjustment and compromise is also desirable. There should be at least some political balance. The answer to the question whether the consociational model is more appropriate for small countries than for the big ones, according to the Lijphart's interpretation, is – for little countries. Because there is a higher probability that elites know one another personally and that their mutual contacts are more frequent, and because small countries feel more endangered from other powers than the big ones, so that the feeling of vulnerability and insecurity creates a strong incentive among them for maintaining the internal solidarity (Dahl 1999: 349).

Giovanni Sartori writes: „A necessary condition for a happy functioning of a consociational democracy is „cooperation between elites" which are consistent in their decision

to fight against disintegrative tendencies of their societies; however, this necessary and indeed decisive condition disappears in the definition of consensual democracy. Same, the defining role of segmented societies which Lijphart originally had in mind was the structure of cleavages, the line of social division, which is not consisted of cross-cuttings but is cumulative and self-enhancing" (Sartori 2003: 91). In Sartori's opinion, the advantages of each element by which Lijphart defines the consociational democracy can be transformed to flaws. Majority coalitions can be more easily blocked and they blur the accountability, equal distribution of power between executive and legislative branches often transforms to „complicated and unproductive confusion in the government", whereas equal distribution of seats among large number of small parties multiplies that confusion. Proportional representation, although essentially good, through allocation of quotas doubles the administrative posts and public expenditures. Granting the veto right to minorities can lead to blockades: „The facilitation of something in fact causes it to happen. The more is allowed, the more requests are received. And what is not discouraged is in fact encouraged. If you award divisions and the spirit of division (and that is exactly what proportionality and veto right do), the divisions and the spirit of divisions are increased and enhanced. And then the mechanism which Lijphart ultimately recommends can rather cause the termination of consensus than its production" (Sartori 2003: 93). Criticizing Lijphart, Sartori concludes that „majority principle is and must be formulated like this: that the will of majority can illegitimately prevail within the borders of respect for the minority rights" (Sartori 2003: 93). Consociational democracy as a system made of counter pressures which deliberately suppress centrifugal incentives should not lead to increase of minorities' appetites.

Historical roots

Bosnia and Herzegovina and Macedonia share the experience of living in the SFRY. Bosnia and Herzegovina was colloquially called „Little Yugoslavia". Pluralization and democratization of these societies started in early 1990s. Both of them belong to heterogenic societies and to a significant extent are deeply divided societies. Heterogenic societies are characterized by the division according to religious, cultural, ethnic segments, which requires

additional efforts for recognition of diversities and functioning of the state. Bosnia and Herzegovina is composed of segments of Bosniaks, Serbs and Croats, accompanied with Muslim (Islamic), Orthodox and Catholic religions. In Macedonia dominant are the Macedonian and Albanian segments, accompanied with Orthodox and Muslim religions as well as with different languages. Both in BiH and in Macedonia national conflicts ended in armed conflicts and were terminated by peace agreements (BiH 1992-1995, Macedonia January-August 2001). In both countries, the process of institution building was marked with presence and influence of international factors. Although determined for entering the EU, that process in both states is a bit slower than in other states in the region.

The former SFRY is taken both as an example of success and as an example of failure of the consociational idea. The former Yugoslavia consisted of six republics and two autonomous provinces. Like other communist federations (USSR, Czechoslovakia), Yugoslavia was dissolved along the national-federal seams. Six new states were created after the dissolution of Yugoslavia, while Kosovo unilaterally proclaimed its independence. Seven years after the proclamation of independence, Kosovo is recognized by 110 out of 193 United Nations member states, among which are the USA, and 23 member states of the European Union. The interpretations of the dissolution of the Yugoslav federation – SFRY – which lasted from 1945 to 1992 are different. Among the factors of dissolution are, among else, the specificities of a communist federation, ethno-nationalism and irresponsibility of political elites. After the dissolution of the SFRY, Serbia and Montenegro tried to maintain some form of common state, but it turned out, first, that two-member federations are hardly sustainable and second, that misbalance and disproportional balance of power are the enemies of federal arrangement. Two-national and particularly asymmetric federations have no perspective. Serbia and Montenegro tried that through the Federal Republic of Yugoslavia (FRY) and then through the State Union Serbia and Montenegro. It is not the model that is guilty for the failure of a federation, but other variables. Fear and aspirations for dissolution and division of state are always present. One of the questions after the dissolution of Yugoslavia and during that process was „whom there are more and whom less", if not in the entire country then at least in certain its parts. There are two reasons for this. First, the SFRY survived on the principle that „there are neither majorities nor minorities" (Jović 2011: 37), and the second is that introduction of multiparty system and

representative (elective) democracy necessarily led towards counting the votes, towards unavoidable creation of voter registries and identification of electorate. Thus the democratic principle one man – one vote was introduced, that is, the majority rule in the election of political representatives. The issues of status of ethnic groups from the former regime and former state remained open: nations and nationalities, constituent nations and national minorities. Concentrated ethnic groups formed states, entities and enclaves. Counting of both voters and votes was primarily done on ethnic principles, which led to a kind of ethno-democracies. For example, at the first multiparty elections in BiH, national parties (SDA, HDZ and SDS) won more than 80% of votes.

Just as in the former Yugoslavia, the relation towards minorities in terms of politics and ethnicity today is still sensitive. How to prevent outvoting, i.e. majorization? Who creates the majority? What is the majority's relation towards minority? Is the state mono-ethnic or multiethnic, i.e. civic in its constitutional definition, is the government one-national, two-national or multinational? Ethno-democracies necessarily led to ethno-homogenization, which further led to mono-ethnic character, if not of states then at least of entities. All this was not possible without „humane displacement" or even „ethnic cleansing". The experiences of the dissolution of Yugoslavia have showed that although there was an intention to bring the ethnic communities closer through „brotherhood and unity", the outcome was just the opposite, so ethnic entities were isolating themselves both territorially and institutionally which led to ethnic distance.

The Dayton and Ohrid Agreements

Certain areas of ex Yugoslavia were affected by ethnic conflicts with tragic outcomes and large number of casualties. In such circumstances the imperative was to calm down the conflicts and pacify the region. The Dayton Peace Accords of November 21st, 1995 stopped the war in Bosnia and Herzegovina, the Kumanovo Agreement of 1999 and the Resolution 1244 of the UNSC stopped the NATO intervention in Serbia, and the Ohrid Agreement of August 13th, 2001 stopped the conflict in Macedonia. The conflict in Macedonia was preceded by the conflict in Kosovo in 1999 which spilled over into Macedonia. The Ohrid Agreement terminated the

conflict between the Albanian side led by the Liberation National Army (ONA) and the Macedonian government. Frameworks for some sort of power-sharing arrangements were posed in a number of states and entities created after the dissolution of the SFRY in 1995. The Dayton Accords, 2001 UNMIK (United Nation Mission in Kosovo) Constitutional Framework for Provisional Self-government in Kosovo, and the 2001 Framework Agreement of Ohrid in Macedonia.

Bosnia and Herzegovina and Macedonia have several elements of consociational democracy. A part of political institutions in Bosnia and Herzegovina and Macedonia emerged as a direct consequence of the Dayton and Ohrid agreements and conflict resolution. The Annex 4 to the Dayton Accords contains the Constitution of Bosnia and Herzegovina. The territory of the former Yugoslavia was not the only one in which some institutions were emerging with an aim to stop conflicts. Some interventions (Sierra Leone 1996 or Afghanistan 2002) had the form of „first aid" and urgent medicine, aimed at stopping the bleeding (Reynolds 2005: 59).

When it is about Bosnia and Herzegovina, it is a state with three constituent nations, two entities, ten cantons and the Brčko District; 14 constitutions: one state, two entities', ten cantonal and one district constitution; 14 legislative bodies; 14 governments and five levels of power: state, entity, cantonal, district and municipal (Kasapović 2005: 156). In Bosnia and Herzegovina an innovation has been applied with the three-member Presidency, where Serbs, Croats and Bosniaks elect their respective members. Each community has a veto right over the laws „which violate national interests".

The Ohrid Agreement moved Macedonia from its self-definition as a national state pursuant to the 1991 Constitution into a mixture with elements of nation state, civic state and binational state (Bieber 2008: 8). The elements of „binational state structure" are contained in guaranteeing certain rights to „communities having more than 20% of population" (Jović 2011: 42), and besides Macedonians these are only Albanians, who according to the census of 2002 made 25.4% of Macedonia's population. Not the same principles have been implemented or functioning in different states. For example, according to the 2002 census, in Montenegro there are 32% of Serbs while the Serbian language is spoken by 63.5% of the population. In Kosovo and Metohija no census was carried out recently, so that data are provisional. The Ohrid Agreement introduced new elements into the Constitution, moving Macedonia towards

consociational democracy. Amendments IV-XV to the Constitution stipulate complex decision-making mechanisms and grant veto right to the minority members in certain regions. The Ohrid Agreement *de facto* confirmed that the Albanians are constituent nation, recognized their language in public and official occasions, higher education institutions in the Albanian language, new municipalities were formed with Albanian ethnic majority, a relevant progress have been achieved in employing Albanians in public services.

The Dayton and Ohrid agreements had two main goals. The first: military conflicts – war were stopped and peace was established. And the second, to establish (renew) the state as a sustainable polity.

Elements of consociation in Bosnia and Herzegovina and Macedonia

First, two states of the Western Balkans, Bosnia and Herzegovina and Macedonia, more than others are deeply divided societies, which hinders their consolidation of democracy and obstructs the resolution of multiethnic relations.

In Bosnia and Herzegovina there are religious and ethnic segments, while in Macedonia they are religious, ethnic and linguistic. Bosnia and Herzegovina has three constituent nations and two entities. Issues about the existence of the entity, of the third constituent people, are increasingly open.

In Macedonia, deep religious, ethnic and national division is accompanied by linguistic barrier between Macedonians and Albanians. Macedonia is deeply divided between the Macedonian majority and Albanian minority. According to the 2002 census, there are 64.2% of Macedonians and 25.2% of Albanians living in Macedonia (State Statistical Office 2002). These divisions are even bigger since these are the overlapping ethnic, religious and linguistic cleavages. All this deepens the gap and weakens the communication across the division lines. The period from the 1991 referendum and the adoption of the Constitution to 2001 and the adoption of the Ohrid Agreement was not marked with a significant inclusion of Albanians into public administration. Both the international and the regional context added to the delicate Macedonia's position. The neighboring Greece contests the name of the state, and for these

reasons on the Bucharest summit in 2008 Greece put veto on Macedonia's entry to the NATO. The neighboring Bulgaria contests the nation and language above else; there were disputes with Serbia about the Orthodox Church.

Second, while BiH is institutionalized with a high level of decentralization of two entities, the Federation and the Republic of Srpska, with federal elements, the solutions offered in Macedonia remained within the framework of a unitary state. In Macedonia no territorial self-government units like the BiH entities have been created (Bieber 2008: 18).

In the vertical division of power we have „asymmetric confederation" in Bosnia and Herzegovina and a bit higher level of decentralization in Macedonia.

Although constitutionally neither federation nor confederation, from the analysis of its foundation documents it can be concluded that BiH is a sort of an „asymmetric confederation" (Kasapović 2005: 151). In BiH there is a territorial autonomy of national segments: entities and cantons. Territorial autonomy of national segments has been constitutionalized at two levels: at the level of the state of Bosnia and Herzegovina in the form of entities and at the level of the Federation of Bosnia and Herzegovina in the form of cantons (Kasapović 2005: 152). Entities have certain features of member states: territory, population, constitution, parliament, government, judiciary, army, police, official languages, flag, coat of arms… Central state institutions have been reduced to foreign policy, foreign trade, customs, monetary and migration policies, air traffic control, fulfillment of international duties and rules, regulation of transport between the entities. The Federation is divided to ten cantons which act as territorial-political units of the dominant national communities (three Croatian and seven Bosniak).

The experience of both BiH and Macedonia confirm that „it is not easy to build democracy in ethnically divided societies" (Maleska 2013: 2).

Although initially having territorial requests, conflict of 2001 ended by requests for more rights for Albanians. As prevention against various appetites, one of the leading principles of the Ohrid Agreement is that „there are no territorial solutions to ethnic issues" (Ohrid Framework Agreement, Art. 1.2.). This principle was formulated as prevention against possible aspirations for territorial autonomy, secession or ethnic cleansing. The Ohrid Framework Agreement is a compromise; on one hand, it reflects the Macedonians' attitude that Macedonia is a unitary state, while on the other hand it increases the participation and influence of Albanians in the

parliament, government, public administration, particularly at the local level. The solutions for the problems searched for a measure between centralization and decentralization, between integration and prevention of disintegration. The Ohrid Agreement did not formally create certain autonomous regions, nor the state was federalized, although there are authors who use the expression "non-territorial federation of two entities" (Marković 2008: 130). Non-territorial federations potentially incline to territorial ones which can pave the road to secessionism. The tendency of territorial autonomies is: autonomy – republic – independent state – secession. Above else, because this is „national federalism". Citizens and the state communicate through ethnic community. In difference from BiH, Macedonia has no other levels of power such are cantons, but only the central government and the local self-governments.

The issue of majority and minority is always open in democracy. The level of democracy of the majority is measured by its relation towards minorities. Decentralization in Macedonia is not an element of group autonomy, except that such impression is left by the local self-government units with majority Albanian concentration. Decentralization or local self-government is constitutionally defined as optimum model which would not endanger the unitary character of Macedonia. The majority community becomes the minority at the local level, and that is a kind of a test for understanding the importance of minority and majority in multicultural societies. Having in mind this level of decentralization, it can be concluded that Macedonia is a weak form of consociational democracy. Two biggest groups, although physically living in the same territory, have always lived separately and had parallel histories, cultures and socio-economic living conditions (Mehmeti 2008: 68). It is rather divergence and separation than integration. Albanians are not perceived as a minority, but as an equal partner to the Macedonians and therefore their political representatives challenge the validity of the state, its founding postulates, the logics of its sustainability (Daskalovski 2006: 55).

The federal-confederal-unitary structure is mostly related to social diversity, as it is or as it originally was. In relation to this certain centralizing or decentralizing pressures, requests and interests are being crystallized. Federalism is usually described as (vertical) spatial or territorial division of power in which constitutive units are territorially defined, states (in the USA, India, Australia and Venezuela), provinces (in Canada), *Lander* (in Germany and Austria), cantons (in Switzerland) and regions (in Belgium). As Leon Epstein emphasizes, „Federalism is both social

and structural phenomenon" (Epstein 1980: 31). As long as different requests are incorporated into institutions peacefully and through negotiations, the system is functioning. The problem appears when it is assessed that the conflict is cost-effective so the nationalist requests are enhanced (Vasović 2003: 43). In the beginning, geographically concentrated groups request autonomy, later republic and finally secession. Ethnic communities are more entrenched into their ethnic ditches instead of less. In spite of non-territorial solutions, Skopje is a divided city, same as a good part of Macedonia, however not yet in the form of entities like BiH. The radical Albanians' requests for full autonomy in Western Macedonia appear from time to time. An important issue for every definition of state is what the limits of its sovereignty are and if it is able to govern effectively. If all the power is moved to the segmented communities, there is very little power left for the common state. Since decentralization in Macedonia is ethnicity-based, it is clear that its performance and stability is **low**. Belgium and Spain were for decades taken as examples of unitary nation states and recently they introduced some forms of confederalism (Belgium) and autonomy (Spain). Eric Nordlinger does not count on federalism as one of the means recommended for regulating the conflict in the divided societies (Nordlinger 1972).

Third, the horizontal division of power is characterized by a kind of proportional representation and power-sharing (grand coalition and veto power).

In Macedonia, grand coalition is less formal and in difference from Bosnia and Herzegovina no strict quotas have been introduced for representation of minorities in the parliament and in the government. Coalitions are mostly ethnic and post-electoral. So, instead of competing with majority decision-making (including the majority electoral system), the idea of consociational democracy is an approval as a strategy of conflict resolution, supported by cooperation, compromise, consensus and agreement among elites. Loyalty of minorities is conditioned with the respect and guaranteeing their rights and freedoms. Minorities can represent „ethnic opposition" which sometimes is „territorial opposition" (Lipset and Rokkan 1967: 10) to the domicile state, whether appearing due to the influence of the home state or independently. An extra weight to the Albanian issue in Macedonia is added by the neighboring Albania which the Albanian population from Macedonia is leaning on (Maleska 2013: 5), as well as by Kosovo where Albanians are the majority. When minorities are integrated and accommodated into the system, they do not want to separate from the country they live in. In the words of John Stewart

Mill: „No Breton, not even Alsace, today wants to separate from France" (Mill 1989: 165). The almost prevailing attitude is that social homogeneity and political consensus contribute the stability of democracy (Lijphart 1992: 9). Politicians in (ethnically, religiously) divided societies have a strong incentive to play on the ethnic card in the election times, using the appeals to the community to mobilize the voters. This leads towards an extreme rhetoric in requests. Extreme rhetoric precedes extreme action and all that moves the ethnic communities away from tolerance, dialogue, reconciliation and relaxing their living together. Every strategy of building a sustainable democracy and cohabitation in divided societies attempts to promote inter-ethnic accommodation, multiethnic and multicultural society and to lead towards a moderate and not extreme or extremist politics (Orlović 2015: 129-131).

Macedonia was changing its electoral system from two-round majority system with single mandate constituencies (1990), through a kind of combined (mixed, 1998) to the adoption of proportional representation with six constituencies (2002) (Bieber 2008: 19). Voting mostly follows the ethnic line. The electoral system was one of the main differences between the majority and consociational model of democracy. According to Arend Lijphart: „Two main choices which the creators of new democratic constitutions face with are the choice between the majority system and proportional representation and between the parliamentary and presidential form of government" (Lijphart 2004: 230). The question is which electoral system is optimal for the divided societies. In these societies it is necessary to find a model which would lead to inter-ethnic accommodation and multiethnic political parties, with moderate center parties. A conventional claim says that proportional representation is better for the divided societies, as a key element of consociational democracy (Lijphart), as it develops the power-sharing mechanisms. Contrary to this „orthodoxy", leaning on Donald Horowitz, Benjamin Reilly advocates for an electoral system in which politicians would not depend only on voters of their own ethnic group. Reilly attempts to answer the question which electoral system can help a democracy which is divided by deep social cleavages (Reilly 2002: 157) and sees an important role of electoral system in conflict management. One of the ideas (electoral innovation) is the use of preferential electoral systems which encourage voters to rank their preferences among different parties and candidates on the ballot. Such are the systems are alternative vote (majority system in single-mandate constituencies of absolute majority) and single transferable vote

(proportional representation with multiple constituencies). These systems encourage politicians to lead a campaign which is not oriented only towards their own ethnic group, but which requires appeals to the other groups' voters for the second level of support. Reilly calls this approach "centripetalism" and it reflects in the following three dimensions: 1. existence of electoral initiative of the politicians in campaign to attract voters of other ethnic groups, which encourages candidates for a more moderate rhetoric; 2. enabling the negotiating arena in which political actors of different groups have incentive to achieve agreements about electoral support and certain important issues; and 3. development of center parties and multiethnic political parties and coalitions (Reilly 2002: 159). The author states the examples of Northern Ireland, Estonia, Fiji and Papua New Guinea.

According to Lijphart, no power-sharing arrangement is complete if ethnic communities are not broadly represented at the level of the government which this author states as the most important element of a community (Lijphart 1992: 45-47). *De facto*, the state's government is composed of representatives of segmented ethnic cleavages in Macedonia with double majority (Macedonians and Albanians), while in BiH there is a triple majority (Serbs, Bosniaks and Croats).

In BiH, proportionality and parity of the principle of regulation of the main political institutions (House of Representatives of the BiH Parliamentary Assembly with one third from the Republic of Srpska and two thirds from the Federation, the House of Peoples consisted per the principle of entity and ethnic parity: five Serbs elected by the RS National Assembly and five Bosniak and Croats each elected by the House of Peoples of the federal parliament; the presidency of both houses consists of one Bosniak, Serb and Croat each; the Council of Ministers (the state government, too, as there should be no more than one third of ministers from the Federation). In that manner the conditions have been created for a grand coalitions government consisting of parties of all national segments; the Presidency of the state is composed of one Bosniak, Serb and Croat each. According to the BiH Constitution, Article 9, Item 3, "Officials appointed to positions in the institutions of Bosnia and Herzegovina shall be generally representative of the peoples of Bosnia and Herzegovina". The President and two Vice-Presidents of the Republic of Srpska must belong to the three constituent nations. The decision-making rules in BiH are characterized by consensus, qualified majorities and veto power. All

important decisions are made by consensus and qualified majorities in both houses of the state parliament (Kasapović 2005: 155). The Council of Ministers is practically irreplaceable until the next electoral cycle.

Among the important points of the Ohrid Agreement is „equitable representation of communities" (Annex B, Art. 5, Ohrid Framework Agreement). These are the affirmative action measures, providing for a larger participation in public administration. For the sake of guaranteeing this principle, one of the most important innovations in the Ohrid Agreement is the principle of double majority, the so-called Bandinter majority (after the French constitutional lawyer who participated in the negotiations) in the legislative process, where passing of laws important for minorities requires the majority of all MPs in the *Sobranie,* together with the majority of votes of the minority representatives (Amendment X to the Constitution of Macedonia 2001). This is the veto power over the laws from the fields important for the identity of the minority communities (culture, use of language, education, personal documents, use of symbols and local self-government). In other fields the support of minority votes is not necessary.

Another innovation is the Committee for Relations between the Communities in the Macedonian Assembly, with 19 members, Macedonians and Albanians give 7 each and Turks, Vlachs, Roma, Bosniaks and Serbs one each). This is a body of a consociational character, with the background idea of bicameralism both from the position of ethnic composition and from the aspect of competences entrusted thereto.

These mechanisms are a kind of an indirect veto. Problems appear frequently, not only between the two largest ethnic groups but also among the political parties of a single ethnic group fighting for primacy and exclusive right to representation of their respective community. Thus, for example, there is a latent conflict between the representatives of the Albanian political parties about the work of the Committee for Relations between the Communities. One of the questions posed by the Democratic Union for Integration is whether the largest (Albanian) minority party necessarily has to be represented in the executive power.

A broad coalition assumes the readiness of the big parties participating in the government to require an approval of other community as well. As Florian Bieber notices: "Grand coalitions are particularly problematic when each group is represented by one dominant party only, which

results in limited variations for creating the coalitions" (Bieber 2004: 238). The Ohrid Agreement is a model of power-sharing which the international community largely applies in the regions with the ended conflict as an optimum solution for the request for secession or right to self-determination (Maleska 2006). International community considered the power-sharing model as a permanent solution for the Albanian-Macedonian conflict, however in the same time neglecting the asymmetry of power among all ethnic communities, so there were no preconditions for creation of an entire "consociational" political system but it created the preconditions for further ethnicization of the Macedonian political life. Every government in Macedonia after the Ohrid Agreement was a grand binational (power-sharing) coalition, with participation of the Macedonian and Albanian representatives in the executive branch.

The veto power encompassed the "laws that directly affect culture, use of language, education, personal documentation, and use of symbols, and the laws on local self-government. For such laws the Assembly makes decisions by a majority vote of the Representatives attending, within which there must be a majority of the votes of the Representatives attending who belong to communities not in the majority in the population of Macedonia". The State Attorney is elected according to the same principle (Article 77), and 3 out of 7 members of the state's Judicial Council (Article 105) according to the Ohrid Agreement have to be elected by the majority of votes of the total number of the representatives not belonging to the majority community (Article 104), same as 3 out of 9 judges of the Constitutional Court shall be elected in the same way (Article 109).

Fourth, open issues of national minorities. Consociational democracy defends or protects the smaller ethnic communities from majorization and outvoting; however, the attempts to resolve the question of the segmented ethnic cleavages blur the questions and problems of (other) national minorities. The Dayton and Ohrid Agreement left aside the guarantees for protection of smaller national communities. In BiH this was confirmed by the Sejdić-Finci verdict, while in Macedonia the issues of all others who are not Macedonians or Albanians remained open. Binational state significantly increased the rights of Albanians, however leaving aside the issue of rights of other minorities (Turks, Roma, Vlachs, Serbs, Bosniaks) who are beyond the Macedonian-Albanian relation. The percentages of Albanians, Turks and Roma have been increased in army, police and public administration (Maleska 2005: 3).

These agreements neither managed to reveal citizens from the fears of majority (from federalization or disintegration) nor from the minorities' fear from discrimination. The problem of exclusion and inclusion, possibilities to elect and be elected, remained open in BiH even after the verdict in the „Sejdić-Finci" case (the verdict of the European Court for Human Rights in Strasbourg of 2009 upon the application by Dervo Sejdić and Jakob Finci who as members of national minorities were prohibited from standing for election to the Presidency of Bosnia and Herzegovina and the House of Peoples of Bosnia and Herzegovina). Unlike Bosnia and Herzegovina, which constitutionally envisaged the places in the three-member Presidency for a Croat, Bosniak and Serb, the constitution of Macedonia does not envisage guaranteed places or a similar ethnic key. Besides, both in BiH and in Macedonia there is a tendency of avoiding certain solutions, where politicians sometimes attempt to declare themselves as other ethnic group in order to use the key for an easier realization of their ambitions.

Fifth, the signing of the Dayton and Ohrid Agreements was carried out under the auspices of the international community. The choice of this model was rather under the external than under the internal influence. These are the states supported and maintained with the assistance of the international presence (BiH – SFOR and OHR; Macedonia – UNPREDEP and OBSE).

BiH legalized the presence of the military *Stabilisation Force* (SFOR) (Jan. 1996 - Dec. 2005). The High Representative in Bosnia (OHR) could pass laws and create new institutions without taking into account the opinion of the Bosnian people. In about fifteen years, the High Representative imposed several hundred laws, out of which as many as 59 have a constitutional category, i.e. redefine Article 3 of the Constitution, which defines the division of competences between the entities, which according to the Constitution is possible only by an inter-entity agreement. The OHR usurped the electoral function as well and used its power to replace the presidents, prime ministers, judges, mayors and other elected officials.

The signing of the Ohrid Agreement would be hardly realized without the representatives of the international community (the EU and the USA), the so-called "facilitators" - French François Léotard and American James Perdew, who are also the co-signatories of that agreement. The term of office of the first preemptive OUN mission in Macedonia UNPREDEP lasted from 1993 to 1999 (Resolution 1142 SC UN and NATO). After the NATO attack on the

FRY, the OSCE rapid reaction force came to Macedonia, to be followed by the KFOR forces. After the conflict between armed Albanian extremists, members of the Albanian Liberation Army and Macedonian military-police forces in 2001 and signing of the Ohrid Framework Agreement, NATO troops were engaged in the Operation Essential Harvest on August 26th, 2001 with a task to collect weapons from the people (primarily from ethnic Albanians).

The role of international community as the initiator and a kind of guarantor of an agreement is important in maintaining the state's unity; however the experience of dissolution of Yugoslavia shows that it is not sufficient without a firm consensus of domestic actors that it was the priority.

Concluding considerations

1. Constitutional-institutional engineering in Bosnia and Herzegovina confirmed some (not) learnt lessons.

First, constitutional-institutional engineering (design), no matter how well imagined, still lacks the issues of political culture and tradition, passions and emotions which it leans on. Historical, cultural and social context is neglected, although being a generator of ethnic reading and loading of the content. Changes in this sphere require longer lapse of time. Interests of implementers and evaluators are superficial and temporary, whereas the problems are long-lasting.

Second, the (mostly externally) initiated solutions led to termination of conflicts, however without producing functional states. In comparison with the legacy prior to these constitutional innovations, the results are not so modest.

Third, one of the questions for implementation of consociational democracy in the territory of the Western Balkans is whether the applied solutions temporarily alleviated deep divisions in society, but deepened them potentially on a long-term basis. However, even if it seems so, it does not mean that the implementation of consociational solutions is the reason.

Fourth, constitutional solutions are not equally efficient if taking or excluding the political-cultural context and social-structural aspects of the environment where certain solutions

are applied. It is important to have this in mind in internationalization of certain solutions. These are deeply divided societies in which there is no consensus about the foundations of the polity among those living in it, but these foundations are imposed and shaped from outside. For all members of the community it is always an important question if they have been accommodated to the extent that there are no desires for separation. Their views and interests are always partial, no matter how much hidden or wrapped into the framework of universal principles. If an ethnic group is not dominant in its state, it turns toward its external homelands, „home states" and „native republics", and the sustainability of the existing arrangements is weaker. In this, in Bosnia and Herzegovina, Bosniaks advocate for integration, same as Macedonians in Macedonia as, in difference from Serbs and Croats in BiH and Albanians in Macedonia, they don't have a „spare homeland".

2. The example of Bosnia and Herzegovina and Macedonia mostly confirms certain critiques addressed to the consociational model of democracy. First, political elites must believe that consociational arrangements are entirely desirable and feasible; tradition which favors reconciliation, mutual adjustment and compromise is desirable as well. There should be at least some political balance among subcultures (Robert Dahl). The "cooperation between elites" which are consistent in their decision to fight against disintegrating tendencies of their societies is necessary, the structure of cleavages is cumulative and self-enhancing, majority coalitions can be more easily blocked and they blur the accountability, equal distribution of power between executive and legislative branches often transforms to „complicated and unproductive confusion in the government", proportional representation through allocation of quotas doubles the administrative posts and public expenditures and leads to increase of minorities' appetites (Giovanni Sartori)

Frequently, consociations are irrational because they disturb a delicate multidimensional balance among certain segments as well as among them and the national interests. In addition, such arrangements can create a centrifugal spiral in the regime. Groups want to maintain what they once received. If they want so, the question is – who will prevent or stop them. Their equal status gives them *de facto* veto power. There is no autonomous center which would fight against, no hierarchical structure which would push them inside. Consociationalism embodies partitocracy (Vasović 2003: 39). The main political actors within segmented groups cumulate

main functions on the basis of their ethnical, regional or other positions. In these circumstances it seems that there is no true competition and real alternative, so that there are almost no changes and overturns in the structure of the government. Division of power among segmented elites can be a hampering factor in decision-making. Multiplied political scene and unclear distinction between the government and the opposition blurs the accountability. Political parties search for a balance between competition and cooperation, attempting to achieve an agreement in which all participants would get a share. As long as various requests are incorporated into the institutions through negotiations and peacefully, the system is functioning.

Replying to the critiques, Lijphart emphasizes that consociation is not an ideal model and that democratic perfectionists have arguments which do not notice that „no democracy can survive without political stability and that stability in a deeply divided society can only be achieved in a manner deviating to a certain extent from the ideal democratic norm" (according to Vasović 2003: 47).   Cooperation of elites is a substitute and it bridges the cleavages among separate camps. In Lijphart's opinion, „good news" is that it is not difficult to write constitutions and other fundamental laws which enable introduction of consensual democracy with power sharing institutions – strong federalism, strong bicameral system, rigid rules about constitutional amendments, judicial revision and independent central bank (Lijphart 2003: 283-286). „Bad news", in his opinion, is that for consensual democracy it is difficult to enroot and progress unless being supported by consensual political culture. He is aware that his book takes more care about institutional than about socio-cultural dimensions. Lijphart thinks that, like in the beginning consensual culture can assist adoption of consensual institutions, same these institutions have a potential to make one initially confronted culture less such and more consensual. For this he quotes the examples of Switzerland and Austria which today can have consensual culture although they had not always been that consensual (Lijphart 2003: 287).

Whether Bosnia and Herzegovina and Macedonia will go in the direction of building consensual culture and maintenance of common living within a polity or they will emphasize the differences in assurance that the conflict is cost-effective, the time will show. Although „culture and compromise are not a strong point of domestic political culture" (Maleska, 2013: 7), the advantage should be given to the consensus-building efforts. In order to avoid moving towards the disintegration processes, it is necessary to give chance to negotiations and agreements, if for

nothing else than because the experiences of armed conflicts are still fresh and consequences are difficult to be healed. It is difficult to answer the question if there is a fundamental basic consensus of „constituent" nations about the minimum for living together.

Macedonia belongs to weak power sharing arrangements which goal was to accommodate ethnic diversities. According to Florian Bieber, Macedonia is a „minimalist consociational system" (Bieber 2008: 13). The Ohrid Framework Agreement was careful about the majority's fear from federalization and disintegration and minority's fear from majorization and discrimination. In order not to be marginalized, minorities have to be guaranteed an adequate representation in representative bodies and inclusion into the executive power. Problems were contained in the issues of minority representation and participation in executive branch and public administration, as well as in „redistribution of resources" (Maleska 2013: 8).

Political participation and representation of minorities can be observed from two perspective: of minority rights and democratic stability. Stability of the state depends on ethnic tensions and (im)possibility of conflict. The minority status in a country is taken as an indicator of democratic achievements and one of the criteria for application of European standards. Participation of members of national minorities in political life of a state is important both for these minorities and for that state. For minorities, higher participation increases the level of their representation in relevant bodies and organs such are legislative or executive power. This increases their integration into the existing society and facilitates the protection of their interests. For the state, higher participation of national minorities in political and public life reduces and prevents national conflicts and increases the legitimacy and level of its democracy.

Both Macedonia and Bosnia and Herzegovina have certain problems which are not in a direct relation with consociational solutions and arrangements. Existence of objective economic problems, increase of unemployment and corruption cannot be directly put into connection with consociational arrangements. An impression is obtained that (constitutional) patriotism is rather reduced on own entity or ethnic group than related to the state as a whole. The feeling of injustice and unfreedom mobilizes ethnic sentiments which have a large mobilization potential and which elites exploit whenever needed. Macedonia is a „elective democracy" facing open issues of deeper social divisions on its road towards consolidation. Was there a consensus of domestic actors about such model and arrangement? Its sustainability will depend on that. The

feeling of who won or lost more also reflects on the reception and support to the Ohrid Framework Agreement solutions. Support is higher from the Albanian and lower from the Macedonian side. In the next period it would be good to follow the measure between centralization and decentralization, integration and disintegration? How much autonomy is possible within a unitary state? How much a minority can get without majority to lose if observed from the *zero-sum-games* perspective, i.e. whether win-win models are possible. Prevention of conflicts has been obtained. Is this their freezing or regulation? Time will show the extent to which the solutions are (self)sustainable. Economic crisis is an enemy of democratic stability because it destroys middle layers and deepens the economic gap, which additionally burdens the performance of the introduced institutions.

References

Bieber F (2004) *Power Sharing as Ethnic Representation in Postconflict Societies*: *The Cases of Bosnia, Macedonia, and Kosovo*. In: Mungiu-Pippidi A and Krastev I (eds.). *Nationalism after Communism – Lessons Learned*. Budapest: CEU Press.

Bieber F (2008) Power-Sharing and the Implementation of the Ohrid Framework Agreement. In Beiber F (ed.) *Power-Sharing and the Implementation of the Ohrid Framework Agreement*. Skopje: Friedrich Ebert Shtiftung Office in Skopje, pp. 7-40.

Dal R (1999) *Demokratija i njeni kritičari*. Podgorica: CID.

Daskalovski Ž (2006) *Walking on the Edge: Consolidating Multiethnic Macedonia,1989–2004*. Chapel Hill: Globic Press.

Epstein LD (1980) *Political Parties in Western Democracies (With a New preface and postscript)*. New Brunswick and New Jersey: Transaction Books.

Jović D (2011) Bitka za etnički status u postjugoslovenskim državama. *Političke analize,* br. 5.

Kasapović M (2005) *Bosna i Hercegovina: Podijeljeno društvo i nestabilna država*. Zagreb: Politička kultura.

Lijphart A (1992) *Demokracija u pluralnim društvima*. Zagreb: Globus nakladni zavod i Školska knjiga.

Lijphart A (2003) *Modeli demokratije*. Beograd i Podgorica: Službeni list SiCG i CID.

Lijphart A (2004) Constitutional Choices for New Democracies. In: O'Neil P and Rogowski R (eds.) *Essential Readings in Comparative Politics*. W.W.Norton & Company, New York, London (pp. 230-238)

Diamond L and Plattner MF (eds.) (1996) The Global Resurgence of Democracy. Baltimore: John Hopkins University Press.

Lipset SM and Rokkan S (1967) Cleavage Structure, Party Systems and Voter Alignment: An Introduction. In: *Party Systems and Voter Alignments Cross-National Perspectives*. New York: The Free Press.

Maleska M (2005) What kind of a Political System did Macedonia get after the Ohrid Peace Agreement?, New Balkan Politics, NO.9 - 2005

Maleska M (2013) Multiethnic Democracy in Macedonia: Political Analysis and Emerging Scenarios. *New Balkan Politics,* Issue 13: 1-27.

Marković N (2008) Ohridski okvirnio sporazum, novi društveni ugovor podeljenog društva. In: *Politička i konstitucionalna integracija duboko podeljenih društava*. Beograd: Fondacija Hajnrih Bel.

Mehmeti E (2098) Implementation of the Ohrid Framework. In Beiber F (ed.) *Power-Sharing and the Implementation of the Ohrid Framework Agreement*. Skopje: Friedrich Ebert Shtiftung Office in Skopje: 67–89.

Mil JS (1989) *Razmatranja o predstavničkoj vladi*. In: *Izabrani politički spisi* (drugi svezak), Zagreb: Informator, Zagreb and FPN.

Nordlinger EA (1972) *Conflict Regulation in Divided Societies*. Cambridge: Center for International Affairs, Harvard University.

Orlović S (2015) *Izborni boomerang, Političke posledice izbornih sistema*. Fakultet političkih nauka Univerziteta u Beogradu.

Reilly B (2002). Electoral Systems for Divided Societies. *Journal of Democracy*. Vol 13(2): 156-170.

Reynolds A (2005) Building Democracy After Conflic: Constitutional Medicine. *Journal of Democracy*. Vol. 16 (1): 54-68

Sartori Đ (2003) *Uporedni ustavni inžinjering*. Beograd: Filip Višnjić.

Vasović V (2003) Lajphartova konsociaciona demokratija. Preface to the book, *Modeli demokratije*. Podgorica: CID.

Other sources:

Dejtonski sporazum, Naša Borba, 1996, Beograd

Ohrid Framework Agreement, http://www.refworld.org/docid/3fbcdf7c8.html

Constitution of the Republic of Macedonia http://www.sobranie.mk/ustav-na-rm.nspx