

Reconciliation and Transitional Justice in Macedonia, Ten Years Later

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Abstract *Main hypothesis of the text is: that Reconciliation process in every post conflicting situation is relatively independent of the success of the normative, and institutional arrangement of the agreement for peace. The reconciliation will have to be negotiated and implemented with parallel, separate structure of measures, political will and monitoring system to be successful. Second hypothesis is: that successful reconciliation could be paradoxically victim of the success of the institutional part of the agreement for peace (case of Macedonia). What produce structural problem of long-term stabilization of the country in question*

Keywords: *reconciliation, peace agreement, structural stability*

1. Introduction

From the distance of ten years of the 200 conflict in Macedonia and the process of signing the Ohrid Framework Agreement (OFA) that same year - by which the conflict was resolved and the processes of change were introduced in the Constitution and the institutions of the country's political system, we can draw the conclusion that one of the elements (at least in the theory of conflicts) for stable resolution of conflicts of identity, ethnic, religious character, in the case of Macedonia, seems to be missing. Notably a thoughtful plan is missing for reconciliation between actors or communities that were in conflict.

The reason for this may be controversial, somewhat ironic - the low intensity of hostilities and the absence of 'blood memory.' The conflict in Macedonia falls in those with low intensity (up to 1000 casualties; in reality there were two or three hundred, and small-scale destruction). Still, there was also the intense, robust international intervention in the form of strong mediation to resolve the conflict, composed of the US and EU mediators (James Pardew, François Leotard, together with a group of 3 key experts) who put emphasis on negotiating an agreement and its effective implementation. It was done in rather short time span, too short to think about some longer plan of reconciliation, considered at that time as insufficiently important or urgent!

The implementation of the OFA went relatively well and in the meantime it made a 'career' as the best deal in the region 'which builds a state', and does not decompose it.

The process of structural and deliberately led reconciliation in this period was again neglected and suppressed by the spectacularity of the political coalition government between the Macedonian parties (first, SDSM - Social Democrats and then VMRO DPMNE - the Christian right with rebel leader Ali Ahmeti and his party DUD).

However, as political coalitions fall in crises and as Macedonia, for various reasons, remains a long period out of NATO and EU integration - the political stability of the country becomes dependent on the stability of interethnic relations and the success of healing the wounds of the conflict. This in turn restores the fundamental importance of the reconciliation on the scene.

2. Reconciliation

In this sense a little bit of theory about the role of this process in post-conflict situations of countries may turn out to be useful.

Namely, **reconciliation** is a lasting process, an essential resolution of antagonisms that were the basis of a cultural and identity conflict. Reconciliation is to create relations of cooperation between people and groups who participated in a previous conflict. It implies transition from competitiveness to cooperativeness, which includes reconstruction of society, creating conditions for normal cooperation and life.

Some authors call this practice 'transformation' (Lederach) or 'peacemaking' (Curle). According to their definition, conflict transformation is: such a solution containing the long-term forms of turning the hostile relations into relations of mutual acceptance and cooperation between actors of the conflict. These forms include the reduction of violence, creating conditions for effective justice and direct connection to social structures that solve everyday problems. (John Paul Lederch, 2003).

First to use the term was Galtung (1996) and was on the trace of K. Popper 'utopian engineering' (1961).

This process of transforming has something from Nye Josep's concept of the 'soft power': to impose priorities in such manner, so that actors adopt them as their own. (Josep and Power 2004)

Usually the reconciliation process covers three elements of the solution: emotional, cognitive, and behavioral. End of conflict creates, at least initially, much anxiety, uncertainty, and disorientation, both in the victims, and in groups who are to create their new roles in the new beginning. This phase is characterized by disengagement, a sense of irreparable loss, dissolution, de-identification, and disorientation in the new conditions. In such circumstances, the danger of returning to hostilities, rebellion and dissatisfaction are common and current. In its entirety, 'reconciliation' helps individuals and groups to create ways and go through a process of self-acknowledgment and 'healing', by accepting the 'other' as equally valuable.

Reconciliation should 'release' victims of the obsessive need for revenge that also results in psychological pain and suffering; it should create a zone of personal safety for perpetrators of crimes so that they would be able to confess them and to report all others who know of them, and thus be able to get closer to the truth of suffering, and when it is possible, to express regret and repentance; and finally, reconciliation should break the vicious circle of mutual violence and injury.

Many times the Archbishop of South Africa, Desmond Tutu, has been rightfully quoted regarding the importance of reconciliation when he says that reconciliation is not illusions and symbolic politics, it is very pragmatic policy. Without forgiveness, there can be no future...

It is good when this practice also develops institutions of regular and permanent communication - the interaction of individuals and groups in which they face (in the initial stages) the pain suffered and gone through, but later used for solving other possible kinds of conflict situations. The conflict usually ends in three parts: an end to the conflict, neutral phase, and phase of a new beginning. Reconciliation begins with a process of so-called transitional or post conflict justice, and it appears immediately after the first part of ending the conflict and ensures the success of subsequent phases.

Transitional justice in its 'hard' part is accomplished through trials for crimes committed during the conflict; this also involves commissions for truth and reconciliation and other forms that should make it possible to construct an official history of past conflicts. The process of trials creates an opportunity to open the truth, to hear the voice of victims and grant justice through impartial official procedure, which has the legitimacy and authority. This process makes the delicate balance between the needs of the wider society for a fresh start and the individual suffering of victims of conflict. This phase ends in some sort of trauma reconstruction and in the announcement of the 'official' truth; understanding (condemnation of the culprits); and compensation to victims. It is the foundation upon which the new institutions of the system and mediators can solicit the proper 'social amnesia' or remission of injustices and crimes committed and achieve lasting peace. Delicacy and the problems of reconciliation are in the context that it touches the emotions and selective memory of the victims and perpetrators of atrocities. Both groups have their own memory and start from it in the process of reconciliation Each individual and group follows his or her own journey through shame, disgrace, rage, anger, guilt, acceptance, and ultimately peace.

Forgiveness and reconciliation as a social project create resistance among the victims at the individual level. There are atrocities and horror that simply can be neither forgiven nor forgotten. Let us recall two quotes in this context: one is by J. Derrida: '... something must remain as madness of the

impossible ...' And that by H. Arendt: '...Some crimes are of such nature that can be neither forgiven nor punished ... After them, remains only silence ...'¹

Experience shows that one should not insist on ritualized and full forgiveness or reconciliation between victims and perpetrators of crimes. Rather, it is enough to have official unveiling of the truth about atrocities that occurred (proceedings if any against criminals or make a commission for reconciliation) and the symbolic gesture of apology; afterwards, this paves the way for collective identities trapped by conflicting stereotypes (victim / executioner), to find the way to new, changed identities that can live in peace.

One does not need to insist on individual redemption, on grounds of the so-called paradox of forgiveness as well. If one forgives the crime then one forgets what is evil and what is good. It is not necessary to seek revenge, but there is anger and silence that does not forgive or forget about what has been done. Proponents of this experience for individual unforgiving consider unforgiving a moral position - whereby the crimes - the victims, the things committed, exist in their memory and this is their debt to live with every new day.

Forgiveness as a need of society, of institutions, is faced with individual pain. Society should have an understanding of this individual level of suffering, for the silence that emanates from the impossibility of evil and its passing away with time. This implies understanding of the loneliness of the victim, who has a right to be above revenge, and also above forgiveness.²

Experience with reconciliation shows better option is to administer justice, namely exposing the truth about what happened (trials); understanding in terms of sympathizing with horror, and reparation for victims.

Important element of lasting reconciliation is curricula that 'reconstruct' the history, collective memory of groups and jointly teach history again.

This practice again emphasizes the importance of emotions and symbols for this kind of conflict

3. Ohrid Framework Agreement

What kind of document is the Ohrid Framework Agreement and does it have provisions that imply reconciliation, at least as a follow-up process? Small review of this act, in whose creation was directly involved also the author of this text, would be useful for text itself.³

The Ohrid Agreement is a political act of domestic nature, with legal considerations-provisions in sections, which it wants to define precisely. It is neither an international agreement nor a peace treaty.

It is not international because of the parties involved in its making and signing, and regardless of the strong guarantee participation of intermediaries, it is basically an internal act. It is not of peacemaking nature, although there are provisions relating to cessation of military actions and regulatory consequences, as in Macedonia there was no war or state of emergency during the conflict itself. From international aspect, it ranks as low intense internal conflict (in a legal sense, something between rebellion and insurgency).

The intensity of foreign interference is due to the importance of peace that Macedonia represents for the region in the eyes of foreigners, and not a result of the ferocity of the clashes. In addition, it was clearly recognized that foreigners would not give legitimacy to NLA ('National Liberation Army') just by letting it sit at the negotiating table, but they stepped up the legitimacy of the Albanian parties registered and active in Macedonia. Foreign guarantors have taken on themselves the burden of 'streamlining or articulation' of rebel demands that went from open racism (in the beginning of the conflict) and later towards human rights agenda. All this proves clearly the inner nature of the Agreement and its strengthening effect on unitary character of the state.

The principles of minority rights that serve as point of departure in the Ohrid Agreement are two: de-territorialization of ethnic rights, their functionalization (except in local government, where it certainly cannot and should not be avoided) and their functionalizing in terms of presenting the identity of the implementing actors (and not as an instrument for political and institutional altering of the Macedonian

¹ Quoted according to: Sources of Resistance to Reconciliation, Erin Ann O'Hara and Sara Sun Beale, Law and Contemporary Problems, 72.2.2009.

² See especially in: The Unforgiving: Reflections on the Resistance to Forgiveness After Atrocity, Thomas Brudholm and Valerie Rosoux, Law and Co, quoted book, p.34-62

³ Professor Vlado Popovski and I were involved in the Ohrid negotiations and the creation of the Ohrid Framework Agreement, as experts on behalf of President Boris Trajkovski. Three international experts, an American lady and two gentlemen from the EU, were present together with us. A kind of a preliminary draft agreement was the concept consisting of two pages of text, referred to the French constitutional judge and Professor Robert Badinter.

democracy). The first means that, consciously and resolutely, territorial solutions to ethnic rights in any kind are omitted (i.e., federalization or cantonization; this is also because of the disaster this model, introduced by the Dayton Peace Conference, had achieved in Bosnia, where it became a stimulus for further ethnic cleansing, and not for democracy). The model, which would implement these principles in the political system, consisted of three basic pillars and a new procedure.

The first was expanding the use of languages of minority ethnic communities (but to a level of clear avoidance of language federalization). Hence precise definition (this section of the agreement has legal provisions) was given for the modality of using the language and for relations of the majority language and the minority languages. This follows the principle of 'expressing the identity of the person using the language' and not a symmetric language federalization. This meant that persons, as members of minority communities, can speak their language in Parliament and its working bodies, but the administration of Parliament is run in one language, Macedonian. Laws are also published in the languages of minority communities; courts conduct trials in proceedings which provide mandatory translation; local government is required to exercise mandatory bilingualism if the minority communities are at least 20%, etc.

The second pillar is the precise agenda for equitable representation of minorities in state administration. Thereat, the special priority segments are the police, the military, diplomacy, and finance. This emphasizes the principle of policy inclusiveness as fundamental to the agreement, even where specifically not stated.

The third pillar is the local democracy (expression used by French legal expert Badinter) or local government, where most of the 'ventilation gases' of the ethno energy are directed at.

In addition, a 'defensive' procedure of voting in Parliament was established for laws that relate directly to ethnic rights - called 'the Badinter majority'. Namely, it is required for such laws, which were later defined to be 46, including the Constitution, to be passed by two overlapping majorities: first, a majority from all MPs (123), and additionally a majority from the MPs belonging to minority communities (32).

Despite fears of ethnicization of law and politics through the introduction of this 'passive veto' (as one may call this system of voting), such criticism has proved unfounded, and its introduction was justified, without any example of its abuse in the practice of the last ten years.

4. Failing in Success

The Ohrid Framework Agreement does not contain provisions, which provide for elaborate institutions of transitional justice and reconciliation. It contains an obligation to 'disarm the rebels', their socialization (in this context, it does not define specific measures thereof) and a law on amnesty for participants in the conflict. It is a minimalist program of rapid reintegration, which, although basically operating, proved insufficient, and, in some points, disputed until today.

In the OFA itself, the principle of inclusiveness offers, in principle, an opportunity for reconciliation in order (specifically contained in section 1.4 of the introduction to the agreement) 'to constantly reflect, in the Constitution and laws, the multicultural character of society ..., the element of equitable representation and fairness in the visibility and recognition of the cultures of non-majority communities (a term used in the OFA) as cultures with equal chances for development'.

Such basis refers to a process of reconciliation that would lead to such a desirable state of equality of chances for the development of cultural pluralism and self-realization of the cultural identity of the individuals - the citizens.

The last Annex (C) of the Agreement includes a reference to a continuous cooperation with the international forums in the direction of achieving those same goals.

The harder segment of the transitional justice - war crime trials - in the case of Macedonia, has turned controversial. Only persons of state security services were accused (the Minister of Internal Affairs and one officer). The Minister was released after 4 years of proceedings and detention, while the officer was sentenced to 12 years imprisonment.

The court procedure also included four cases of war crimes committed by members of the NLA, all ethnic Albanians. The Hague Tribunal considered them irrelevant under its jurisdiction and returned them for trial in domestic courts. That decision created tensions in Macedonia and a sense of selectivity of international justice. This feeling (especially among the majority population of ethnic Macedonian origin) has narrowed the possibilities for reconciliation between the actors of the conflict, instead of mitigating them. Furthermore, the cases returned for trial in Macedonia caused tensions between government partners from the Macedonian and Albanian blocs - what to do with them next? Albanian

parties sought to suspend and process them under the amnesty law, while Macedonian parties insisted they be tried and brought to an end with a conviction for the perpetrators of the acts. Another fact was also present here - the partisanship and incompetence of the Macedonian judiciary to objectively lead such procedure to the very end, which only complicated the debate. The issue of the four opened Hague cases is still unresolved and to this day remains a subject of political agreement (???) even for the latest government coalition being negotiated while the text is being written (June 2011). The very fact that there will be certain 'political agreement' for these four cases is aggravating circumstance for their processing in the spirit of future reconciliation between the communities. Namely, they should be treated case by case and legally be classified as follows: proceedings in which the NLA leadership is accused for some acts should fall under the amnesty law (2 cases). For cases (2) where the victims were civilians - the proceedings must continue and end with a final verdict. War crimes against civilians cannot fall under the amnesty law; it is also inadmissible for them to have political agreement or bargaining of any kind. Only in this way, justice will be felt, and that is the basis for reconciliation. The families of the victims and families of missing persons (both Macedonians and Albanians) should be approached with a program of reconciliation or forgiveness after that act of justice. The postponement of such administering of justice is aggravating circumstance for the process of reconciliation in Macedonia, after the conflict and the Ohrid Framework Agreement.

Return of IDPs (internally displaced persons) from the conflict in 2001 also remains confusing and unresolved problem. Namely, 700 (?) ethnic Macedonians remain out of their homes (mostly in villages with a predominantly ethnic Albanian population), to this day living in shelter centers (Kumanovo and Skopje). It is hard to understand how the state has found no mode to solve the problem by offering compensation and definite accommodation to these people. This fact, however small, remains a problem hanging above the processes of reconciliation, because members of only one ethnic community (ethnic Macedonians) feel as the very victims; on the other hand, the moral effect from the state's lack of any concern makes devastating repercussions far beyond the group endangered.

5. Conclusion

There is impression that the reconciliation process in Macedonia has been 'the victim' of the successful and fast normative institutional implementation of the Ohrid Agreement? Is such scenario possible? Is not this contradictory to the usual stance that the normative and institutional arrangement of the peace agreement between the parties in the conflict is condition for successful reconciliation process? It seems that such assumption is not entirely correct. Namely, it is insufficient! The Macedonian experience has undoubtedly shown that project of reconciliation between communities in conflict must be specifically designed and implemented. Reconciliation does not happen automatically, per se, as outcome of successful normative and institutional arrangement of peace agreement. Beneath the surface of the seeming successfulness of such agreement, inter-ethnic tension and intolerance might be boiling, with their own pace and dynamism. Having prejudices remains unsolved or even being fuelled!

The Macedonian example is instructive. Namely, since there had been no particular plan for reconciliation, the communities had plans of their own to compensate for their own perception of the conflict (independent of the concluded Ohrid Framework Agreement). The Macedonians, by great majority, have felt to have been 'hurt' by OFA and have reacted resignedly to its implementation.

On the long run, such feeling politically has been projected into supporting a populist, nationalist elite (the VMRO-DPMNE party, in the 2005-2011... period), of such kind previously unseen in Macedonia. This political elite has focused this dissatisfaction of the Macedonians and projected it into an 'object of hatred' – against the international community that 'is harassing and pushing us'; against the local Albanians 'who are always demanding something and never have enough'; and against the Greeks (the name dispute) 'who want us to disappear and not exist as Macedonians.' Such irrational nationalist projection (of being hurt) is certainly self-wounding for the Macedonians and is conditioned also by other moments of the Macedonian transition; however, it is a political fact that should be taken into consideration and my thesis is that it is partially the outcome of not having a project for reconciliation with the Albanians after the 2001 conflict.

Second, the lack of reconciliation project fiercely has come to the surface in the years after the 2001 conflict, as uncontrolled symbolic nationalism and national demonstration of the Macedonians – through the project: national monuments at every turn ('Skopje 2014') and start of the project for 'antiquitization' of the Macedonian identity. This reactive nationalist process with the Macedonians was further accompanied by a series of printed editions of textbooks. These textbooks glorify the shadowy

historical materials of the ancient Macedonian identity and historical events that expanded unfounded borderlines between purely the heroic 'ours', and the dirty 'theirs' - completely contrary to the spirit of sharing history (so essential for reconciliation).

Regardless of the participation of the Albanian party in government, the budget is being spent extremely unbalanced in favor of a Macedonian symbolic revolution of national self-persuasion. It disturbs and destabilizes inter-ethnic relations and is contrary to 'the spirit and principles' of the OFA. It was the 'Macedonian reaction' to being hurt and lack of channels to handle it through a process of reconciliation (with others and with oneself).

What was the Albanian reaction after the initial euphoria of the conclusion of the OFA? The Albanians in Macedonia claimed that the OFA is an expression of their 'victory' in the fight to improve their status. Ninety percent of the Albanians in Macedonia supported the OFA. The Albanians considered that they should not make other 'concessions' and reconcile with anyone, since they achieved what they wanted, or, at least, it was close to the contents of the institutional and normative framework of the OFA. Since the USA and EU mediators had not initially insisted on any project of reconciliation, the Albanian side forgot it as well. The Albanians only insisted on full implementation of the OFA (although there were different interpretations of what it means to fully implement the Agreement with passage of time and whether it has been implemented or not).

In the meantime, changes had appeared for the Albanians as well. Their status did not change significantly as expected and were found surprised and uncomfortable with the rush of delayed Macedonian nationalism. Not all things were achieved, as it seemed at the beginning, in the early years after the conflict. Something was missing. Although the Albanians were part of the government (through the party that came out of the rebel movement - DUI), this DUI was placed in a position of weaker partner in the government, which only approves and has no real influence in politics. Systematic processes of reconciliation were missing and there was no basis for pressure on the Macedonian side for such policies that would be substantially different and would lead to such things as, for instance: sharing history, balanced historical narratives of all ethnic communities; official history of the conflict and of other historical events, and so on.

As a result, the Albanians have dropped their support for the OFA, although it remains high: initially from 90%, now to 80%.

Meanwhile, the Macedonians, with the passage of time, have increased their support for the OFA: from the mere 1.5%, now to 62%.

What now? Is now the time to actually begin the project of the true reconciliation? Are present conditions ripe for this? Have the Macedonian and Albanian communities ended their own reactive and euphoric perceptions of the Agreement by which they had closed their mutual conflict and perceived it more realistically? In this context, they are finding that the Agreement is not sufficient in one its part: the concept of long-term reconciliation.

This project stands before us. The author of this text is optimistic that this project has chances and, furthermore, is a real need today and tomorrow in Macedonia.

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