

Transitional Justice in Macedonia and its relations with Democracy

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Abstract:

This article focuses on the transitional process in a society which has experienced a violent conflict and needs adequate mechanisms to deal with the legacies of the past in order to prevent future violence and pave the way for reconciliation and democratic consolidation. The disintegration of the Socialist Federal Republic of Yugoslavia (Yugoslavia) and its legacy has left a number of newly emerged and independent democracies in the Western Balkan region to cope with grave violations of human rights. The bloodshed in Croatia and Serbia, and the genocide in Bosnia and Herzegovina lead to the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY). The jurisdiction of ICTY was extended to Macedonia and the 2001 conflict; however, the Ohrid Framework Agreement (OFA) inclusion of an Amnesty Law raises a number of questions related to the process of reconciliation and transitional justice mechanisms. In The Republic of Macedonia (Macedonia), the need and importance to promote understanding, tolerance and peace for all within the country has been sidelined in the OFA because the main goal was to end the violence, accentuating peace over justice. As a result, OFA focus on political representation and ethnic power-sharing has neglected past grievances and atrocities which are of utmost importance in order for a society to move forward with its democratic consolidation.¹As such, this paper will look at the mechanisms of transitional justice and its relations with democracy. Its aim is to argue that a long-term approach stemming from the different mechanisms of transitional justice is imperative for democratic consolidation and stable inter-ethnic relations in Macedonia.

¹Vankovska, Biljana. *The Role of the Ohrid Framework Agreement and the Peace Process in Macedonia*. Regional Cooperation, Peace Enforcement, and the Role of the Treaties in the Balkans. A. Longo Editore, 2007.6.



INTRODUCTION

Macedonia was the first state in the Western Balkan region after the break-up of Yugoslavia and the Republic of Slovenia European Union (EU) accession to sign the Stabilization and Association Agreement (SAA). The signing of SAA is a primary step to start the EU integration process since the agreement creates a legal framework for cooperation between the EU and EU perspective states.² The same year in 2001, after the signing OFA which ended the armed-conflict with ethnic Albanians,³ Macedonia reformed its constitution and paved its way further towards EU accession. The changes and amendments to the constitution were in line with EU accession process in order to conform to EU standards and norms. In Article 2, the rights of the citizens are guaranteed through their exercise and authority to democratically elect their Representatives, to hold referendum and other forms of direct expression related to the political framework.⁴ The 51st Article guarantees that the laws passed will be in "accordance with the Constitution and all other regulations in accordance with the Constitution and law. Everyone is obliged to respect the Constitution and the laws."⁵ The 52nd Article of the Constitution requires that laws and regulations are published before they come into force in the "Official Gazette of the Republic of Macedonia."⁶

The necessary changes to the Macedonian Constitution have been an integral factor to the strengthening of the rule of law and creating, as well as guaranteeing a system of checks and balances. The 114th Article of the Constitution guarantees self-government which is an avenue for direct influence through elected officials.⁷ The 115th

Article further extends the right of the citizens enabling them to directly participate in the decision-making process where the matters are specified by law "entrusted to the municipality by the Republic."⁸ The Constitution of Macedonia has adopted the laws needed to pave its way towards democratic transformation and consolidation. The laws are in place to be effective as a mechanism to ensure the continuity of democratic values which are intended to fulfill the EU accession conditionalities. However, the changes to the Macedonian Constitution through the implementation of OFA reforms have not addressed the question related to 2001 war crimes cases adequately; rather, an Amnesty Law was adopted. The adaptation of an Amnesty Law at the time of the signing of OFA was a step towards peace; however, it did not include the mechanisms of transitional justice.

In order to address crimes committed during the 2001 violent conflict, it is imperative to understand that societies in the transitional process need adequate mechanisms to deal with the legacies of the past in order to prevent future violence and pave the way for reconciliation and democratic consolidation. The disintegration of Yugoslavia and its legacy has left a number of newly emerged and independent democracies in the Western Balkan region to cope with grave violations of human rights. The bloodshed in Croatia and Serbia, and the genocide in Bosnia and Herzegovina lead to the establishment of ICTY. The jurisdiction of ICTY extended Macedonia and the 2001 conflict. However, OFA and the enforcement of the Amnesty Law in 2011 raised a number of questions related to the process of reconciliation, States responsibility to investigate and democratic consolidation. It has also placed Macedonia outside of the regional trend when it comes to the compliance with ICTY.

In 2008 ICTY under the 11bis rule has referred four cases to Macedonia to be processed in the national court; instead of the court to process the cases, the Amnesty Law was enforced. The Amnesty Law has stopped the national courts from hearing cases involving violations of international humanitarian law which is contrary to the norms of international justice reflected in the treaty that estab-

² *EU Enlargement: The Former Yugoslav Republic of Macedonia.* http://ec.europa.eu/enlargement/candidate-countries/the_former_yugoslav_republic_of_macedonia/relation/index_en.htm (Accessed July 12, 2012).

³ *The United States Refugee Agency.* <http://www.unhcr.org/refworld/publisher,IRBC,,MKD,3f7d4dc91c,0.html>

⁴ *The Constitution of the Republic of Macedonia (Skopje).* http://www.servat.unibe.ch/icl/mk00000_.html (accessed July 13, 2012).

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*



lished the International Criminal Court (ICC). It also led to the debatable question whether the Amnesty Law has affected the inter-ethnic dialogue and the process of reconciliation. The decision to enforce the Amnesty Law is viewed as appeasing to the perpetrators at the expenses of the victims and their families. As such, the legal premise of the Amnesty Law and State's duty to investigate crimes against humanity are in question.⁹

In order to analyze the issue of Amnesty Law, its impact on the process of inter-ethnic reconciliation and how transitional justice mechanisms are employed, especially when it comes to its impact on democracy, this paper aims to argue that a long-term approach stemming from the four different mechanisms of transitional justice is imperative for democratic consolidation and stable inter-ethnic relations in Macedonia. This approach of analysis requires local actors rather than sole international engagement because the process of reconciliation must focus on specific needs of the society rather than pure ethno-political gains.¹⁰ The needs can be addressed through the mechanisms of transitional justice because the current approach of power-sharing is ethnocentric and biased. The ethnocentric balance of power-sharing is one of the key reasons why transitional justice mechanisms have not been employed in Macedonia and an Amnesty Law was enforced.

TRANSITIONAL JUSTICE IN MACEDONIA

The United Nations has been in the forefront in terms of transitional justice. It defines it "as the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation."¹¹ This approach has been applied in a number of post-conflict cases, including the Western Balkans. The process involves a number of "judicial and non-judicial mechanisms ... that include individual prosecutions, reparations, truth-seeking, institu-

tional reform, vetting and dismissals, or a combination thereof."¹² It is widely acknowledged by scholars and practitioners that societies which have experienced grave violations of human rights should be assisted in their efforts to deal with the legacies of a past regime or political structure which lead to the conflict in the first place. At the same time, ICTY's efforts in establishing the facts about the disintegration of Yugoslavia and the crimes which have been committed during the Balkan wars has incorporated transitional justice into its legal mechanisms and outreach. ICTY defines transitional justice "as a set of restorative or retributive mechanisms aimed at dealing with the legacy of a violent past."¹³ In addition, the International Center for Transitional Justice contributed to the development of academic research which is closely related to legal studies.¹⁴ As a result, the study of transitional justice has become important in relations to conflict resolution and post-conflict reconstruction which includes a broad range of mechanisms from international rules and norms to guidelines and specific mechanisms.¹⁵ In Macedonia the application of Amnesty Law diverge, to an extent, from these international legal standards. As such, the enforcement of Amnesty Law should have been in compliance with ICTY and international law; however, it appears that it is not.

In order to provide an victim-oriented approach in regards to Amnesty Law and transitional justice in the case of Macedonia and for the purpose of clarity; the definition of transitional justice should include both the attempts to deal with the 2001 conflict human rights violations as well as with the legal aspects related to rule of law. Nevertheless, there is a lack of literature and analysis on the process of reconciliation in Macedonia related to the mechanisms of transitional justice. As such, the correlation between Amnesty Law, transitional justice and consolidation of democracy has not been given enough scholarly attention. The focal point of Amnesty Law literature has been related to Latin America and some African countries which is why the case of Macedonia is a unique one given that it is the only country in the region with an Amnesty Law. As such, the scholarly overview tends to be related to the process of reconciliation as a form of institution building rather than justice seeking even though the process of democratic consolidation requires a reckoning with the past. The "external economic and po-

⁹Lamont, Christopher K. Forging Transitional Justice: The Reconciliation of Law and Transition in Macedonia. *The Macedonian Question: 20 Years of Political Struggle into European Integration*. *Libertas* (2012): 77.

¹⁰*Ibid.*, 223.

¹¹ United Nations Rule of Law.

http://www.unrol.org/article.aspx?article_id=29 (access May 2012).

¹² *Ibid.*

¹³ The International Center for Transitional Justice. <http://ictj.org/> (access April, 2012).

¹⁴ *Ibid.*

¹⁵ *Ibid.*



litical influences and turbulence...social injustices and inequalities" have been translated into ethnic terms under the premise of OFA.¹⁶ The translation of socio-economic problems into purely ethnic one was one of the easiest ways to mobilize the citizens' politically in Macedonia, as Biljana Vankovska has argued in a number of articles.¹⁷ This political convenience provided with OFA argument of the "containment of violence" has institutionalized ethnic differences and as a result enforced the Amnesty Law in 2011 without investigating and punishing the perpetrators.¹⁸

OFA AND AMNESTY LAW

The 2001 conflict was short lived due to international intervention and the signing of the OFA. In the immediate aftermath of the 2001 conflict, the Macedonia government passed the Amnesty Law, as part of OFA, to protect former combatants from prosecution for crimes committed in the context of the 2001 conflict. The Amnesty Law was introduced and passed at the time when ICTY was conducting its transitional justice approach to the conflicts in the Western Balkan region. The initial Amnesty Law was restricted because it excluded war crimes, crimes against humanity and other violations of international law under the jurisdiction of ICTY. The 2002 *Amnesty Law* states the following;

"The provision of paragraphs 1, 2, and 3 of this Article do not apply to persons who have committed criminal acts related to and in connection with the conflict year 2001, which are under the jurisdiction of and for which the 1991 International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of the former Yugoslavia, will initiate proceedings." ¹⁹

The restriction of the Amnesty Law was bypassed in 2011 when the Macedonian parliament decided on 19 July to apply it to all of the cases returned to Macedonia for prosecution from the ICTY under the 11bis rule.²⁰ The decision terminated the investigation and prosecution

process of four war crime cases, "NLA leadership", "Mavrovo Road Workers", "Lipkovo Water Reserve" and "Ne-prošteno."²¹ The cases are violations of international humanitarian law which include alleged incidents of torture, enforced disappearances, murder and sexual abuse.²² The case of Amnesty Law related to the crimes committed is further exasperated given that since 2001 no adequate measures have been undertaken to investigate the cases of six ethnic Albanians believed to be the victims of enforced disappearances by the Macedonian Ministry of Interior police.²³ In addition, no investigation has been conducted in relation to the abduction of 12 ethnic Macedonians and one Bulgarian national, all of whom are believed to have been abducted by ethnic Albanian armed groups.²⁴ A Macedonia Amnesty Law that bars national courts from hearing cases involving violations of international humanitarian law is viewed contrary to the norms of international justice reflected in the treaty that established ICC and international law.

The debate and conspiracy surrounding Amnesty Law in Macedonia and in general has a natural tendency to affect the inter-ethnic dialogue and the process of reconciliation. The decision to enforce the Amnesty Law appears to be appeasing the perpetrators at the expenses of the victims and their families. As such, the compatibility of Amnesty Law with the international law is in question because in this way the Amnesty Law is closing the chapter on the 2001 conflict without proper investigation of the crimes committed. It is evident that a throughout analysis of the law is of utmost importance because Macedonia should comply with its international obligations. The Macedonia authorities have an obligation to thoroughly and impartially investigate all cases returned from the ICTY and ensure that all those allegedly responsible for violations of international law are brought to justice. The consent of the survivors and victims' families should be taken into consideration in order to provided them with some form of reparation, truths and justice if the reconciliation process is going to be successful in the long term.

TRANSITIONAL JUSTICE AND THE REGIONAL TREND

¹⁶Vankovska, Biljana. The Role of the Ohrid Framework Agreement and the Peace Process in Macedonia. *Regional Cooperation, Peace Enforcement, and the Role of the Treaties in the Balkans*. A. Longo Editore, 2007.6.

¹⁷ *Ibid.*, 6.

¹⁸ *Ibid.*, 20.

¹⁹The Official Gazette of the Republic of Macedonia 2002.

²⁰ Lamont, Christopher K. Forging Transitional Justice: The Reconciliation of Law and Transition in Macedonia. *The Macedonian Question: 20 Years of Political Struggle into European Integration*. Libertas.2010: 78. .

²¹ *Ibid.*

²²Human Rights Watch. 2001. "Torture, Kidnappings by Albanians in Macedonia" Human Rights Watch, 10 August 2001. <http://www.hrw.org/news/2001/08/10/torture-kidnappings-albanians-macedonia> (accessed May 2012).

²³ *Ibid.*

²⁴ *Ibid.*



The regional trend in terms of persecuting individuals responsible for violations of international humanitarian law and war crimes has been given adequate attention and researched in the case of Bosnia and Herzegovina, Croatia and Serbia. However, the case of Macedonia poses a set of new questions and a trend by itself given that the three aforementioned countries have established war crimes chambers for the crimes committed during the 1990's.²⁵ All of the countries, including Macedonia, have been more or less in compliance with the ICTY over the years. Nevertheless, the 2011 decision of the Macedonian parliament to enforce the Amnesty Law challenges the compliance argument at this moment. Furthermore, it provides us with a new insight into the mechanisms of transitional justice and how it is applied in Macedonia versus the other three countries in the region. As emphasized earlier, Macedonia's Amnesty Law explicitly exempts crimes under the jurisdiction of the ICTY and as such the Macedonian parliament should not have enforced it. The legal rationale for applying the Amnesty Law is to accentuate peace over justice without taking into consideration the long-term effects on stability.

The political, social, ethical and democratic consolidation implications of the lack of an investigative process for reconciliation and justice emphasizes the need of a throughout analysis. The importance of protecting human rights, especially when it comes to reconciliation and the impact it has on the process of democratic consolidation as well as the obligation of the Macedonian state to protect the victims is a subject that has been neglected in the academia. The Western Balkans region has been academically neglected when it comes to Amnesty Law; as such, the issue of justice and dealing with the past is one of the key components for reconciliation. However, the process of reconciliation and implementation of transitional justice mechanisms can be undermined and negatively affected in Macedonia because of the Amnesty Law. The fact that there are no civil society organizations specifically working on issues related to crimes committed during 2001 and that they did not play a role in regards to the enforcement of the Amnesty Law is proof that democracy is being consolidated purely through the implementation of OFA and EU conditionalities. As such, a possible negative intent or unintended side-effects of the Amnesty Law can be that the grievances of 2001 crimes will be hushed until there is a second conflict. In addition, without proper investigation of the crimes this situation can further provoke and contribute to the nationalist

rhetoric where OFA is seen as the preservation of ethnic division rather than a first step towards reconciliation.

CONCLUSION

The Ohrid Framework Agreement and the current approach to Macedonia's institution building when it comes to democratic consolidation have not directly utilized the mechanisms of transitional justice. The implementation of OFA has been conducted through a classical, state-centered institution building where the main actors in conceptualizing public needs are not the non-governmental actors and citizens of Macedonia; rather, the main actors are the ethno-centric nationalist political parties. The role of the civil society has been marginalized especially when it comes to the 2001 conflict and crimes committed. This marginalization is a second indicator that the public-political discourse is conceptualized through ethnic and political aims rather than citizens need to know the truths.

One recommendation which could be a starting point for Macedonia's process of reconciliation through the premises of transitional justice in order to build social trust and ultimately stable inter-ethnic cooperation is to step back from the ethnocentric approach of institution building. The importance of legal investigations and an open dialogue related to crimes committed in 2001 should not be structured around ethnic identity nor ethnic balance, but justice. This approach should offer an incentive for truth seeking and cooperation to deal with the past. Once the incentive for truth seeking is established and the Amnesty Law is amended in order to allow the national court to precede with the ICTY cases, than we will see the positive effects of the different mechanisms of transitional justice on Macedonia's democratic consolidation. It is important to state that this process is a long-term process rather than a short-term structural change. The balance between the government and non-governmental sector in relations to the process of reconciliation and crimes committed during the 2001 conflict must be achieved through a public discourse. The end goal should always be justice along with peace in order to pave the way for long-term reconciliation and democratic consolidation; but, this can only be achieved if the crimes

are investigated in the first place which means that the Amnesty Law is a barrier rather than a solver in the process of reconciliation and democratic consolidation.

²⁵ *Ibid.*



The views expressed in the paper are not the views of the Konrad-Adenauer-Stiftung and the Center for Research and Policy Making. They are personal views of the authors.

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