

**EXERCISING THE RIGHT TO PROTEST:  
THE INDICATOR OF COUNTRY'S DEMOCRATIC CAPACITY  
AND THE CASE OF MACEDONIA**

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**Natalija Shikova**

Center for Change Management in Macedonia (CCM), Skopje, Republic of Macedonia

**Abstract.** *Stability of the institutions, safeguarding democracy, rule of law, human rights and respect for and protection of minorities are necessary political criteria for the states striving to become part of the EU. Democracy and rule of law are the fundamental values of the constitutional order of the Republic of Macedonia. The Constitution guarantees human rights and freedoms, civil liberties and national equality. Relying on the analysis of the practice of exercising the civic and political right to protest as envisaged in the Macedonian majoritarian democratic framework, the author of this paper points to insufficiently developed civil identity in Macedonia and proposes measures which may contribute to its improvement. It is necessary because, apart from meeting the political criteria which are prerequisite in the EU accession process, it is in the interest of the state to encourage greater civil activity in the process of making and adopting decisions that are aimed at advancing the democracy.*

**Key words:** *democracy, deliberalization, right to protest, identity, citizens.*

## 1. BACKGROUND

The Macedonian society is divided along different lines and the civil concept that is inclusive for all, regardless of ethnic, religious, political or any other background, is missing. The current division into "us" and "them", the tentative satisfaction with the provisions pertaining to equality and fair representation reflected only in quota systems are neither in fact nor as a concept aimed at building the civil society and citizens aware of their rights and obligations, willing to contribute to its improvement. Failures are evident in the two blocks of major ethnic groups and major political parties, but the responsibility lies primarily with the ruling majority which is obliged to detect any deviations from normal social coexistence,

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**Corresponding author:** Natalija Shikova, LL.D.

Center for Change Management in Macedonia (CCM), Mile Pop Jordanov 62a, 1000 Skopje, Republic of Macedonia

E-mail: natalijashikova@hotmail.com

to analyze them and to propose measures and ideas that will address the problems and improve the situation. This caution implies constant alert; it is crucial for the survival of systems which are (for various geostrategic, economic, global, political circumstances) vulnerable about different issues, particularly the issue of ethnic problems. A possible solution is to create projects that exceed the divisions and strengthen civic awareness, create and foster inclusive civic identity, promote responsible, conscientious and articulated citizenry and enhance the citizens in expressing their views.

Given the adverse economic situation in the country, as well as the ethnic and political divisions, the general public perception is that political leaders are satisfying only the interests of the political elite and its closest supporters. The voice of the citizen is marginalized and, for the most part, citizens are passive observers; the situations where they practice direct democracy or get organized around interest groups are largely ethnic or political in character. The construction of personal identity in Macedonia is primarily ethnic, frequently political but rarely or never civil. This is particularly dangerous and comes to the fore in times of crisis. It is in the interest of the Government to encourage and support civic initiative, and to promote (rather than suppress) organizing groups around different interests, other than political or ethnic ones.

## 2. SCOPE OF THE RESEARCH

This paper focuses on the right to protest as an expression of democracy. It tackles two aspects, or more precisely, two types of democracy: the deliberative and the consensual democracy vis á vis the efforts of the Republic of Macedonia to build an open society on the basis of equality, non-discrimination and tolerance, but this concept still seems to be underdeveloped. The paper provides an overview of the analysis of the current state of affairs in exercising the freedom of expression, freedom of thought and freedom of speech which are articulated through the right of peaceful protest. In that context, the author provides a retrospect of major protests in Macedonia that occurred in the past few years as a way of exercising the right to freedom of expression. This article indicates that, instead of highlighting the clear civic attitudes and focusing on specific civic issues, almost all protests in Macedonia are associated with ethnic ideology. This ideology reflects ethnic problems and easily eruptive dominant ethnic (as opposed to civil) identity; (for example, instead of being qualified in the media as “suspected citizens”, the offenders are first associated with their ethnic background). Moreover, it frequently reflects political motives which are articulated in the form of protests and counter-protests (as an indicator that there is a tendency in the society to marginalize the ones that are expressing differing views from the majority) as well as in the lack of civil initiatives (to organize protests that would go beyond the ethnic lines). All these circumstances are perilous for democracy. In the conclusions, the author draws attention to the dangers of such inconsistency in the Macedonian or any other society that aspires to be democratic, and proposes some measures for citizen inclusion as well as the steps to be taken to encourage and strengthen civic identity and activism.

### 3. THEORETICAL FRAMEWORK

The basic human rights documents emphasize the right of all citizens to participate in the political life of their societies<sup>1</sup>, which is the essence of democracy. Democracy primarily implies providing the opportunity to each individual to participate, either directly or through elected representatives, in decision-making processes that directly affect one's life; its secondary meaning is reflected in the prevailing will of the majority. Although the process of free and fair elections is commonly associated with democracy, this is not a sufficient condition for a country to be considered a democratic one.

In that respect, until recently, the practice was as follows: the international community perceived the democracy of a certain political system as state internal matter if it was legitimized by the majority. But, this practice has changed and now there is growing pressure on the states in terms of establishing democratic standards. According to the common practice of International law, the existence of democracy is not a requirement for statehood; however, the EU is the first that has laid down the democratic criteria as a set of requirements that the states need to fulfill in order to get recognition and establish diplomatic relations.<sup>2</sup> Moreover, ensuring democracy and observance of human rights (respectively) are essential for countries aiming for EU membership, as defined by the accession criteria (Copenhagen criteria)<sup>3</sup>; hence, all states seeking EU membership must conform to the conditions and respect the values envisaged in Article 2 of the Treaty of Maastricht (Treaty on the European Union)<sup>4</sup>. Concurrently, in order to establish important functional democracy, individual states must practice plural and inclusive citizenry, regularly conduct free elections by secret ballot, respect the rule of law and recognize the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union.<sup>5</sup>

In less homogeneous environments, the majoritarian democracy does not provide the necessary flexibility and causes more conflicts than democracy.<sup>6</sup> Unlike majoritarian democracy, consensual democracy seeks to maximize the participation of various factors in power-sharing. Its purpose is to share, to disperse and to limit the power in multiple ways. Thus, the consensus model is characterized by involvement, negotiation and compromise, and it contributes to stability of multicultural societies. The system looks static, elitist and based on unequal representation but it is the truest way to deal with problems in culturally divided

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<sup>1</sup> These documents stipulate that the commitments are based on Article 25 of the International Covenant on Civil and Political Rights and Article 21 of the Universal Declaration of Human Rights (Universal Declaration on Human Rights, 1948), which stipulate that the will of the people should be the basis for the government authority.

<sup>2</sup> According to the criteria for recognition of new states in Eastern Europe and the former Soviet Union (Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, 16 December 1991), new states will be recognized if they are structured on a democratic basis.

<sup>3</sup> Relevant criteria were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995.

<sup>4</sup> "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail", Article 2, Treaty on the European Union, 1992.

<sup>5</sup> Charter of Fundamental Rights of the European Union, 7 December 2000, as adapted in Strasbourg on 12 December 2007.

<sup>6</sup> Arend Lijphart, *Patterns of Democracy, Government forms and performance in thirty- six countries*, Yale University 1999, Ibid 31

societies, where strict majority rule is inappropriate and where this majoritarian norm can very easily be turned into a tyranny of the majority.<sup>7</sup>

The epistemological view of democracy, which is primarily based on the process of collective deliberation, differs from the populist view of democracy, which simply emphasizes the value of the majority decision method, regardless of the manner for achieving majority. The issue of inclusion (i.e. who the democratic policy-making process should include to maintain its epistemological value) is one of the intricate issues. Deliberative democracy provides a clear answer to that question: on the basis of equality, the policy should include all parties whose interests are in conflict and who may be affected by decisions in the democratic process. Therefore, this type of democracy empowers those who are motivated and interested in certain issues to have direct personal impact on public policy by having their voice heard. The opportunity to hear those whose voices are not normally taken into account in decision-making processes ensures a greater control of the government, and it ensures that moral discussion is replicated in the political process.<sup>8</sup>

However, upon analyzing the current effects of democracy and the democratization of the countries with developing democracies (particularly the two aspects: deliberative and consensual democracy), these countries may *prima facie* seem to be encouraging or enhancing ethnic demands, multi-ethnic problems and social conflicts.<sup>9</sup> But, as an afterthought, a well-institutionalized democratic state determines the arena in which such requirements are to be addressed, encouraging and promoting the sources of unity and shared values that help preserve its stability, such as: belief in consultations and dialogue; supporting diversity and tolerance, compassion and generosity; advocating freedom, peace and non-violent change; and development of common civic identity and shared civic culture.

#### 4. ANALYSIS

Being a candidate country for EU membership, the Republic of Macedonia strives to fulfill the aforementioned objectives.<sup>10</sup> Democracy and rule of law are the fundamental values of the constitutional order of the Republic of Macedonia, and the Constitution guarantees human rights, civil liberties and national equality.

Yet, analysis of several recent cases pertaining to the exercise of civil and political right to protest in the Republic of Macedonia indicates that civil identity is underdeveloped. Consequently, it imposes the need to develop a range of policies which will focus on identifying the critical aspects and downsides of social life, and propose possible solutions. The civil and political course of the Macedonian multicultural society calls for an inclusive civic identity, whose creation shall not be reduced to establishing only the formal features

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<sup>7</sup> Eric A. Nordlinger, *Conflict Regulation in Divided Societies*, Cambridge MA, 1972

<sup>8</sup> Carlos Santiago Nino, *The Constitution of Deliberative Democracy*, Yale University Press, New Haven & London, 1996

<sup>9</sup> Donald Rothchild, *Ethnicity and Conflict Resolution*, *World Politics* xx, 1969 pp.596-616; Ian Lustick, *Stability in Deeply Divided Societies: Consociationalism versus Control*, *World Politics* xxxi April 1979 pp.325-45; Alexis Heraclides, *Self-determination of Minorities in International Politics*, Frank Cass and Company Limited, 1991

<sup>10</sup> Agreement for stabilization and association between the Republic of Macedonia and the European Communities and their Member State, which regulates relations between the Republic of Macedonia with the European Union; signed on April 9, 2001

of a democratic institutional framework; in effect, it is necessary to institute more targeted measures for its cultivation and improvement. Given that these measures are currently missing, they are proposed in this paper. The right to protest is selected for analysis because it is a way of demonstrating the general public attitude and the specific motives behind it. The analyzed cases suggest complex social phenomena that should be subject to careful examination in order to identify obstacles which may jeopardize the required level of democratic progress, which has been set as a political criterion for EU membership.

The right to protest is underlined in the most important international documents pertaining to human rights, such as the International Covenant on Civil and Political Rights of 1966 (hereinafter ICCPR, Articles 18 to 22)<sup>11</sup>, and the European Convention on Human Rights of 1950 (hereinafter ECHR, Article 9 to 11)<sup>12</sup>. The right to protest is closely related to freedom of expression and freedom of association. Thus, it has two aspects: first, it emphasizes the right of peaceful assembly, including freedom to hold rallies and demonstrations without the intervention of the state; second, it includes a positive obligation of the state to provide space for expression of social position and to protect the protesters from potential counter-protesters. Although these rights are not absolute and unlimited, as they may be restricted by the state under certain circumstances (primarily in the interest of public order, security or smooth operation of public services),<sup>13</sup> they are a clear expression of democracy.

The Republic of Macedonia is a signatory to the ICCPR and the ECHR, which have been ratified and thus have become part of the domestic legal order. The Constitution of the Republic of Macedonia (Article 20, 21)<sup>14</sup> guarantees the citizens' freedom of association for the purpose of exercising and protecting their political, economic, social, cultural and other rights; the envisaged restrictions pertain to the violent overthrow of the constitutional order, calling for and encouraging military aggression or ethnic, racial or religious hatred or intolerance. The Constitution also guarantees the right of peaceful assembly and expression of public protest (with restrictions in military and emergency situations). This issue is further regulated by individual legislative acts which establish the conditions for exercising the right to protests by some public services which are of vital importance for the society.

However, what is the current state of affairs: do the Macedonian citizens really enjoy and exercise this right? What are the motives governing its exercise and what do citizens usually protest against?<sup>15</sup>

If we consider the recent protests in the country, which were quite impressive by the number of protestors and the perseverance in expressing the idea behind the protest, it can be unequivocally concluded that all the protests have not been associated with the expression of civic attitude, i.e. the protesting issues have not been related to civil motives. The protests were commonly held for the purpose of protecting or promoting the policies that favor or support an ethnic or political group, or for the purpose of supporting or opposing the

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<sup>11</sup> International Convent of Civil and Political Rights, 1966

<sup>12</sup> European Convention on Human Rights, 1955

<sup>13</sup> The prohibition contained in the ICCPR concerning the incitement of national, racial or religious hatred is one of the limitations which deserve special attention, particularly in terms of the exercise of the right to protest.

<sup>14</sup> Constitution of the Republic of Macedonia, Articles 20 and 21, 1991

<sup>15</sup> Note: The exercise of the right to protest is used here as a litmus that indicates certain social phenomena. The analysis is based on the basic indicators and aimed at encouraging further debate towards a greater democratization of the society.

institutions which were expected to bring a decision in favor of a particular ethnic or political (party) structure.<sup>16</sup>

On the other hand, the examples of true citizen initiatives were rare, such as the protests organized by the civil initiative group "Aman" (August 2012 - February 2013) whose members protested against the increased costs of living. In terms of motivation for protest, the composition of protesters and the prominent symbols, these protests exceeded the ethnic and political boundaries. The protesters' civic initiative to change the respective legislation was discussed in Parliament but their amendments were not accepted. Similarly, only a few protests were motivated by the protection of human rights, reflecting civic awareness of the need to unite in adversity and rise above the dividing lines. An example of this is the protest against the killing of a boy in the central square in Skopje by a member of the Special Police Forces, during the celebration of the political election victory (June 2011). It was a strong incentive for thousands of citizens, regardless of ethnicity or political views, to publicly express dissatisfaction over the fatal police brutality.

Apart from these two striking examples of (civil motivated) protests, most protests were largely motivated by ethnic or partisan reasons, which is evident in the rhetoric, iconography and homogenous mono-ethnic or mono-political structure of protesters. It is a clear indication that, instead of highlighting civic attitudes and focusing on specific civil problems, protests in Macedonia predominantly deal with ethnicity, which implies easily eruptive ethnic problems. An indicative example is the case of the civil initiative group "Dignity" whose members protested against the appointment of the former National Liberation Army commander for the position of the Minister of Defense.<sup>17</sup> This initiative was immediately followed by a counter-protest by members of the Albanian community (February-March 2013). In a multicultural society (such as the Macedonian one), the tendency of having protests governed by the ethnic dimension is a flagrant threat to sustaining the law and order in the country, particularly given the fact that such protests are almost invariably accompanied with violence, vandalism and threatening rhetoric of the persons or groups confronted along the lines of ethnic identity (i.e. dominant ethnic identity as compared to civic identity). The protests related to attempts to resolve several murders in Smilkovsko Lake followed this pattern, for which reason there was a general public impression that they were ethnically and religiously motivated; thus, the protesters were again confronted by counter-protesters, divided along ethnic lines.<sup>18</sup> The same differential matrix was repeated in the protests in Gostivar concerning the attempts to resolve the murders of two boys of Albanian nationality, who were killed by a police officer of Macedonian nationality (Feb 2012).

Another example of a protest predominantly motivated by political goals is the protest of the opposition parties against the manner of adopting the state budget in the National Assembly. The protesters faced a number of successive counter-protests organized by groups of redundant workers, retirees and artists (who were seen or presented in the media

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<sup>16</sup> The data used in the analysis of these protests were provided by Mrs. Vesna Bocharova, MA Public Policy.

<sup>17</sup> Following the ethnic conflicts in 2001 and the armed conflicts between the Army of the Republic of Macedonia and the National Liberation Army (NLA) whose supporters advocated for increasing the rights of Macedonia's ethnic Albanians, the Ohrid Framework Agreement was concluded. This document guaranteed more rights to the ethnic Albanians in Macedonia but it was concurrently the cornerstone for building the consensus framework for power sharing in the Macedonian society.

<sup>18</sup> Motivated by the arrest of several suspects, the counter-protesters were predominantly persons of Albanian nationality and Islamic religious belief (April-May 2012).

as members or sympathizers of the governing political parties, the one that were for the most part directly affected by the political process (December 2012).

On the whole, protests that demonstrate civic awareness in Macedonia are very rare. It is also symptomatic that every recent protest, where the protesters demonstrated against a particular social situation, institutional or governmental solution, was accompanied by a counter-protest. On the one hand, such a social situation indicates that the state is not consistent in its obligation to create social conditions for the exercise of the right to protest<sup>19</sup> as one of the possible ways to achieve deliberalization and active participation in political life, which is the main constituent of the concept of active citizenship in community. On the other hand, such a state of affairs indicates insufficient dynamism and impact of civil initiatives and a weak civic identity, as opposed to the strong feelings of ethnic identity.

In addition, it was only recently (in September 2014) that the Macedonian National Assembly introduced changes in the Primary Education Act and the Secondary Education Act, thus restricting the educators' right to protest because educators on strike can be substituted by new ones for the purpose of maintaining the educational process. The two Acts were adopted in an expedite procedure and without any public debate and consultations with relevant social groups. This was generally perceived as a violation of the constitutionally guaranteed right to strike and condemned both by the unions and the general public, but without any positive outcome yet.

##### 5. POSSIBLE POLICIES TO OVERCOME THE OBSTACLES AND ACHIEVE INCLUSIVE CIVIC IDENTITY

There are numerous reasons for poor civic identity and lack of civic initiatives in Macedonia, the most prominent of which are (among others) the poor application and avoidance of measures and incentives that promote direct democracy.

Apart from meeting the formal requirements for EU membership, it is in the best interest of a candidate state to create and design dynamic social environment which will promote citizens' active participation in public life and in decision making processes. The greater individual involvement strengthens the public dialogue, helps in overcoming divisions and contributes to social progress.

As far as the Macedonian society is concerned, the most appropriate measures and methods for promoting citizens' active participation in democratic processes and strengthening the civil society initiatives and attitudes would be: stimulating voluntary organization of citizens and creating networks and coalitions with specific initiatives in civil society-related issues, rights and interests; strengthening the political capacity for active citizenship with the ability and power to influence and defend public interest; increasing cooperation with state institutions and the civil society to respect various views despite possible differences and disagreements in order to overcome civic passivity and low citizen participation in the formulation and implementation of public policies; building partnerships; changing the image of government officials (largely perceived as uncooperative people in a superior

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<sup>19</sup> For example, in Northern Ireland, which has a history of divisions and conflicts arising from the long tradition of marches and protests, if a particular protest is logged with counter-protest, the police determine the permitted number of counter-protestants, whereas there is a special commission that issues a permission on the location where the protest will be held; this special commission is a body composed of citizens representing all relevant social groups.

position as compared to the inferior position of ordinary citizens) who have to become constructive and responsive partners in the political dialogue and governing processes; providing for a greater media coverage of civil society initiatives to achieve social mobility and visibility; ensuring a better exchange of information and greater involvement of stakeholders in policy-making processes; and eliminating legal obstacles undermining the exercise of the right to protest.

These measures and methods can promote civic identity, public awareness and response, and thus underscore the epistemic value of democracy in which active citizenship has a constructive and fundamental role. The promotion of these measures and incentives for their application would stimulate civic participation in raising issues that go beyond ethnic or party interests. In this regard, it is important to establish common symbols or social values that unite and are aimed for achieving greater social inclusion.<sup>20</sup>

## 6. CONCLUSIONS AND RECOMMENDATIONS

Focusing on civic issues that affect all citizens, finding ways and models that ensure the expression of their different views and demonstrating respect for human rights are just a few measures that the ruling majority has at its disposal. The current state of affairs may be overcome only by encouraging dialogue and freedom of expression, building democracy and responsive citizenry, which is relevant not only for their self-esteem but also for their image in the eyes of the governing authorities in a given social context. The political map and power structure can change but a violation of the principle of civic inclusion and different obstacles in exercising the right to freedom of expression, freedom of thought and speech, freedom of association and the right to peaceful expression of protest are not only detrimental to democracy but they also have long-lasting consequences in all segments of society. In view of the EU accession process, it is essential for a country aspiring to meet the political criteria and improve its democratic image to overcome these obstacles.

In that context, the conclusions and recommendations are as follows:

- In the Republic of Macedonia, there is a lack of civil concept that is inclusive, regardless of ethnic, religious, political or any other affiliation; as proposed in this article, there is a need to take targeted measures in order to enhance public awareness, to create and nurture an inclusive civic identity that transcends the divisions based on ethnic, religious and political differences;
- Civic activities and civil involvement in decision-making processes on socially significant issues are inadequate due to inconsistencies in meeting the requirements for true democracy: lack of participation of relevant stakeholders in the national debate; limited freedom of expression of the participants in the debate; unequal conditions for civic participation; inadequate respect of the ruling majority for diverse opinions; and insufficiently argued decisions which are not based the principles of the common good; therefore, it is necessary to encourage and strengthen direct democracy, to reduce obstacles hindering the exercise of the right to protest, to devise ways and models for actions and to ensure greater observance of different views on civic problems;

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<sup>20</sup> Constructive framework for the social order can be – deliberative and consensual democracy, that are political models suitable for less homogeneous environments. They are viable framework for dealing with problems in culturally divided societies, where strict majority rule is inappropriate



▪ Ethnic identity is the predominant feature of the Macedonian society; hence, it is necessary to analyze the deviations from the established social coexistence and to approach the issue with extreme caution; it is also necessary to detect and properly address such problems; such vigilance is crucial for the survival of systems which are (given the geostrategic, economic, global political circumstances) highly vulnerable on various issues, especially on the issue of ethnic relations;

▪ There are inconsistencies in the exercise of the right to protest as a way of expressing public opinion and conducting public deliberation; the political map and power structure of society can change but the violation of the principle of inclusiveness as well as the limitations in exercising the right to freedom of expression, freedom of thought and speech, freedom of association and the right to protest peacefully have long-lasting consequences in all segments of society. They destroy rather than empower democracy.

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**OSTVARIVANJE PRAVA NA PROTEST:  
INDIKATOR DEMOKRATSKOG KAPACITETA ZEMLJE  
I SLUČAJ MAKEDONIJE**

*Stabilnost institucija, očuvanje demokratije, vladavina prava, ljudska prava, poštovanje i zaštita manjina su neophodni politički kriterijumi za države koje nastoje da postanu deo Evropske unije. Demokratija i vladavina prava su osnovne vrednosti na ustavnog poretka Republike Makedonije. Ustav garantuje ljudska prava i slobode, građanske slobode i nacionalnu ravnopravnost. Oslanjajući se na analizi prakse ostvarivanja građanskog i političkog prava na protest, koje je zagantovano u okviru demokratskog većinskog izbornog sistema u Makedoniji, autor ovog rada ukazuje na nedovoljno razvijen građanski identitet u Makedoniji i predlaže mere koje mogu doprineti poboljšanju njegovog kvaliteta. To je neophodno jer, osim ispunjavanja političkih kriterijuma koji su preduslov u procesu pristupanja Evropskoj uniji, u interesu je države da podstakne veću građansku aktivnost u procesu donošenja i usvajanja odluka koje su usmerene ka unapređenju demokratije.*

*Ključne reči: demokratija, deliberalizacija, pravo na protest, identitet, građani.*