



Power-Sharing and Minority Rights: The Case of Bosnia-Herzegovina and North Macedonia

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Abstract

This paper investigates to what extent is consociational power-sharing compatible with and supportive of key principles of minority rights. For this, it analyses the Dayton Agreement for Bosnia-Herzegovina and the Ohrid Accord for North Macedonia to understand how minority rights has been shaped by the consociational arrangements in both states. Linked by a common past and interconnected socio-political dynamics, both countries are engaged in a process of stabilization and consolidation of their democratic and institutional structures in the broader context of convergence and respect for fundamental rights. In the body politic of Bosnia-Herzegovina and North Macedonia, consociation in practice means integrating the interests and concerns of various groups in policy formulation and decision-making. The purpose is to minimize the prospects of conflicts and facilitate social, political, and economic improvement in an atmosphere of peace for all citizens. It was a question of reaching a balance between the divergent positions and existential fears to guarantee both immediate and progressive stability, from peacebuilding to peace-enforcing. In addition, the consociational modalities provided the most obvious and acceptable framework for mediating mistrust and enmity between the diverse groups amid structural weaknesses. Hence, examining minority rights in both states is essential regarding the promotion and protection of fundamental human rights. This position gains more eminence due to human dignity, diversity, and a sense of pride in one's own culture and identity. Nevertheless, this paper uncovers that the protection of minority rights in the power-sharing systems is without problems as minorities encounter challenges in projecting their interests.

Keywords: *Bosnia-Herzegovina; Consociation; Minority Rights; North Macedonia; Power-Sharing*

1. Introduction

Post-conflict societies have the objective of building peace, stability, and socio-economic development. However, Bosnia-Herzegovina, with its two state entities, presents profound drawbacks in the sectors of civil and political life. The legitimacy of the ethnic division gained momentum in the creation of two state entities: The Federation of Bosnia-Herzegovina with a Croatian-Muslim majority, and the Republika Srpska, with a Serbian majority. This mechanism is based on the principle of three people, two entities and one state. The 1995 Dayton Agreement climaxed the end of Bosnia-Herzegovina's civil war between the three main ethnic groups, Serbs, Croats and Muslims shortly after

the country gained international recognition in 1992. The consociational structures has given rise to a highly complex institutional architecture and bureaucratic apparatus that did not favour cooperation between the two entities but contributed to accentuate their entrenched positions. The result is a slowdown in policymaking as well as social and economic reconstruction processes (Europe - Miscellaneous, 1995, November).

Conversely, until 1991 North Macedonia was one of the six federated Republics of Yugoslavia, but its secession took place peacefully. The referendum that sanctioned the independence of North Macedonia in September 1991 did not resolve the fractures between the Macedonian majority and the strong Albanian minority amid Turks, Roma, and other minorities present in the country. Violent skirmishes between Albanian fighters and Macedonia security forces resulted in hundreds of deaths and a threat to regional stability. The signing of the Ohrid Accord in August 2001, which included some clauses to protect the Albanian minority, led to the definitive cessation of hostilities (National Legislative Bodies / National Authorities, 2001, August). Accordingly, the sharing of political power is a strong sign of commitment in this direction. Positive action for the realization of peace and fundamental rights are essential rudiments for reconciliation and democratic consolidation. In this regard, consociation has the function to protect the equality of subjects with respect to individuals' rights and freedoms.

The minorities, object of this discussion, are those groups of people who are distinguished by the peculiarity and diversity of their ethnicity, language, religion, and culture compared to those of the community to which they belong (Daftary, 2001). The question of minority rights presents ever more challenges in a globalized and multicultural world. It has been an instrument of obscure political designs, led to numerous aggressions, justifiable or not, and the direct or indirect cause of ethnic conflicts that sometimes extend beyond national borders. Thus, the problem of minority rights is in reality a complex cluster of political, economic, social, and historical factors. The recognition of individuals belonging to minority groups, of freedoms and fundamental rights are vital conduits of inclusiveness. In addition, the interest in the promotion and protection of fundamental human rights has increased considerably with rights defenders highlighting abuses and bringing perpetrators to justice (Human Rights Watch, 2021).

Therefore, this paper aims to demonstrate the tendency towards building an increasingly integrated society, towards universalism and the predisposition towards a homogenization of human rights. These are destined to assume an ever more meaningful centrality related to the right of peoples over their own cultural identity. Such an inspiration should lead states to enhance the heritage of historical, linguistic, and cultural distinctiveness of which minority groups are key custodians. From the foregoing, this paper addresses to what degree has consociational power-sharing in Bosnia-Herzegovina and North Macedonia safeguarded national diversity by protecting the vital interests of minorities. In addition, the article examines how the power-sharing arrangements mitigated internal divisions to achieve the normalization of the state and respect for human rights. To pursue these tasks, the next section engages the literature on consociational power sharing, while the third section highlights the research methods. The fourth section presents the results and discussion before concluding.

2. Literature Review: Consociational Power-Sharing

Conflict can be analysed as a competition for power, while the transformation of conflict involves the sharing of power (Noel, 2005). The concept of power-sharing denotes a range of political, territorial, or military arrangements that bring belligerents into some form of a common framework to reduce risks and tensions. Here, consociational power-sharing is understood as a system based on cooperation by different antagonistic groups in order to share power and responsibility. According to the typology established by Lijphart (1977), political power-sharing corresponds to a consociational structure, defined by bringing together a fragmented political culture in a consensual and non-competitive manner. Through this model, a conscious effort is made towards non-majoritarian decision and policy making. The objective is to avoid the dangers of instability in a fragmented society.

Lijphart distinguishes four elements that characterize consociationalism. Firstly, a grand coalition that involves the participation of the representatives of various groups in the plural society. Secondly, a high degree of autonomy for each group to run its own internal affairs. The autonomy principle facilitates the decision-making process by reducing the time to consider alternative methods of policy making. In matters of common interest, decisions are made on consensus with the various groups, while other matters are left to each group. Thirdly, proportionality as the main rule for political representation, allocation of civil service and public funds. Lastly, mutual veto which serves as an additional protection for the vital interests of minorities. Thus, the veto right is the ultimate weapon entrusted to minorities as checks and balances (Lijphart, 1977).

A major aspect of political power-sharing is to produce a shared government through some form of group accommodation and a move beyond the majoritarian system of government. By contrast, the competition for political power creates tensions and the likelihood for conflict. While the winner-take-all presents a severe barrier to minority representation, consociation enhances fair representation for minority groups, diversity of political viewpoint, and a check against power monopoly. Thus, consociation recognizes multi-ethnicity and provides safeguards against minority marginalization. Furthermore, it is a framework that ensures cooperation, flexibility, and moderation in entrenched positions, thereby lowering the stakes for discontent and a return to violence (McCrudden & O'Leary, 2013). Protecting the vital interests of all groups and their inclusion in socio-political institutions gradually overcome the distrust and resentment cemented by their divisions.

On the contrary, the practical application of consociational power-sharing is not without problems. Critics argue that power-sharing regimes that are geared towards protecting ethnic group identities and interests may in fact serve to institutionalize discriminatory cleavages, rather than accommodate them (Bell, 2018). Correspondingly, ideological differences based on religion, ethnicity, class, or language, are generally seen as obstacles to consociational systems. As a result, when social divisions and pressures coincide, the chances of creating a stable system remain scanty. In addition, power-sharing in post-conflict multi-ethnic states usually have greater difficulties in setting up fundamental human rights objectives that are necessary rudiments of minority inclusion (McCrudden & O'Leary, 2013).

Therefore, the devolved institutions need stability and credibility to ensure their long-term survival and relevance. Hence, the prime element is political moderation, complemented by the willingness to compromise. In addition to the more traditional top-down political inclusion of the main actors, there is also the need to build long-term transformative capacity to root out causes of minority marginalization. Fundamentally, consociational power-sharing has been a passing phase in the development of Netherlands from 1917 to 1967, Belgium in 1918, Switzerland in 1943, Lebanon from 1943 to 1975, Austria from 1945 to 1966, Malaysia from 1955 to 1969, Colombia from 1958 to 1974 and Czechoslovakia from 1989 until its partition in 1993 (Andeweg, 2000). Consociation has also been adopted at various stages to resolve conflicts such as Cyprus from 1960-63, Northern Ireland from 1973-74, Bosnia-Herzegovina in 1998 and North Macedonia in 2000 (Ibid).

3. Research Methods

This paper employs a multiple-case design to analyse Bosnia-Herzegovina and North Macedonia consociational power-sharing arrangements. A multiple-case design embodies the 'logic of comparison' (Bryman, 2016) making extensive reference to the dynamics of both countries' social, political, and minority rights systems. This entails studying the contrasting cases to better understand the social phenomena (Yin, 2009). In addition, due to the undisputed value of documents, systematic searches of relevant documents were essential in data gathering. Three main factors affected the choice of the cases and documents: the precise field of data, especially what it involves; the geographical area of reference; and the literature review that provided the basic assumptions. Furthermore, by comparing the two cases it

is possible to establish whether the consociational theory will hold or not (Eisenhardt, 1989; Yin, 2009). Therefore, a multiple-case design represents a tool for deepening the knowledge of the matter under enquiry rather than its specific variables. The method also allows the researcher to investigate holistic and meaningful characteristics of the problem, processes and structures as well as how to deal with the immense data (Eisenhardt, 1989). Nevertheless, a multiple-case design presents some difficulties. The most frequent challenges are attributable: to the lack of rigor and the possible creation of masses of illegible documents. The rigor relates to the criteria for conducting the research and the behaviour of the researcher (Darke, Shanks & Braodbent, 1998). However, the rules in a multiple-case design are no different from any other form of study. Although a multiple-case design can generate a large mass of illegible documents, it is also true that there are specific criteria, methods, tools, and strategies that support the analysis and data collection processes. Thus, each research strategy has a different way of collecting and processing data. The essential task of the researcher is to apply the ethical and methodological principles defensible in all data collection, analyses, and discussion of the results.

4. Results and Discussion

The Dayton Agreement is composed of two essential elements: a framework pact containing the general principles, and eleven annexes regarding the concrete ways to establish peace and rebuild Bosnian-Herzegovina's institutions (Europe - Miscellaneous, November 1995). The first text is characterized by ten articles that defines the commitments binding on the belligerents regarding the cessation of hostilities. It also affirms the obligation of cooperation in relation to investigations of crimes and other violations of international law. The second recognizes the importance of peace, reconciliation, stabilization, and reconstruction of the state institutions. For the first time in its history, the Organization for Security and Co-operation in Europe (OSCE) was designated to oversee the organization of Bosnian-Herzegovina elections and to promote human rights (OSCE, 2006). Designed to preserve the rights of each of the belligerents, the Dayton Agreement has largely contributed to the stabilization of Bosnia-Herzegovina amidst its ethno-community divisions. The impracticability of giving each citizen the right and power to choose their representatives, provide for the sharing of power among the various groups in Bosnia-Herzegovina (Europe - Miscellaneous, November 1995).

Conversely, the Ohrid Agreement led to the establishment of a minimum structure of cooperation, based on the reality of ethnic division and incorporated more recognition of minority rights. Subsequently, rights of minorities in North Macedonia have been respected following the Ohrid Agreement (National Legislative Bodies / National Authorities, 2001, August 13). Yet, ethnic polarization constitutes the greatest danger to internal political stability. However, power-sharing arrangements should address fundamental human rights principles especially civil and political rights, as well as minority rights. The civil and political rights encompass equality and non-discrimination, the right to privacy and to vote, and freedom of association, of assembly and expression. In addition to the aforementioned, minorities should not be denied the right to enjoy their own culture, to practice their religion and to speak their language (UN General Assembly, 1966, December 16).

4.1. Broad Government and the Principle of Equality and Non-Discrimination

The power-sharing principle of broad or coalition government is a vital instrument for the attainment of stability and peace in a multi-ethnic society. In a post-conflict multi-ethnic society, decisions are perceived as entailing high stakes, and strict majority rule could place tensions on the unity, peace and reconstruction of the state. Both Bosnia-Herzegovina and North Macedonia established a coalition government in different ways. In Bosnia-Herzegovina there was a formal requirement for the central government to consist of representatives from the two entities, the 'Federation of Bosnia-Herzegovina' and 'Republika Srpska'. This structure was aimed at guaranteeing the interests of the three main ethnic groups. However, it has been observed that it is less common to install a power system shared in presidential systems. A possible way is the distribution of the presidency and other high positions

among the different groups (Lijphart, 1977). Yet, Bosnia-Herzegovina power-sharing provides a strict ethnic representation in the Presidency. The presidency rotates between three members: a Bosnian and a Croat chosen directly from the territory of the Federation, and a Serb elected directly from the territory of the 'Republika Srpska'. Each member is elected to a four-year term, which the three presidents serve concurrently (Europe - Miscellaneous, November 1995).

However, in North Macedonia, the president holds a substantially ceremonial office. The country's political system revolves around the alternation between two governing coalitions, both composed of parties belonging to the two predominant ethnic groups in the country, the Macedonians and the Albanians. The coalitions are separated from each other on ideological differences. In addition, the country does not apply strict requirements of ethnic allocation in the central government. The various ethnic groups, particularly ethnic Macedonians, Albanians, Turks, Roma, Serbs and Vlachs enjoy some form of equal representation in the central government. This informal power-sharing among the various ethnic groups has been in place since the country's first post-conflict elections in September 2002 (OSCE, 2006: 4). The system of inclusive government was solidified after the majority dominated Social Democratic Union of Macedonia formed a coalition government with parties representing ethnic Albanian minorities in May 2017, ending a two-year political deadlock (Freedom House, 2018).

As McCrudden and O'Leary points out, power-sharing regimes that include leaders drawn across the political divide encourage moderate and cooperative behaviour that can turn political opponents into cooperative partners and enhances minority participation. This may strengthen the capacity of elected officials to take difficult but necessary decisions to improve minority rights. The political balance of power among the diverse ethnic groups minimises group domination, arbitrariness, and dampens ethnic intolerance (McCrudden & O'Leary, 2013). Hence, in-formal power-sharing seems more accommodating to achieve consensus and stability. Stability in a divided society partly rests on reconciliation and allowing individuals irrespective of cultural and language differences to participate in the political system.

In contrast, the ethnically backed grand coalition in Bosnia-Herzegovina seems confronted with challenges to minorities inclusion. Concern over minority participation in the country's tripartite presidency gained momentum after Bosnia-Herzegovina came under the regime of the European Court of Human Rights (ECHR) on 24 April 2002 (Council of Europe, 2021). In the case of *Sejdic & Finci v. Bosnia-Herzegovina*, the ECHR stated that disallowing minorities to exercise their civil and political rights based on ethnicity is unacceptable and a violation of the prohibition of discrimination. It stressed that no difference in treatment based on a person's ethnic origin could be justified in a democratic society built on the principles of pluralism and respect for human rights and fundamental freedoms (Council of Europe: ECHR, 2009).

Unequal participation is unjustified if it is not pursued with a legitimate aim, proportional to the means employed, and necessary in a democratic society. Even justifying unequal participation based on national security concerns lacks merits. Therefore, it is incumbent to adopt affirmative action to diminish or eliminate conditions that perpetuates discrimination. Having ratified the ECHR and its Protocols, Bosnia-Herzegovina is entrusted to comply with the obligations contained therein (Ibid). The principle of non-discrimination not only expresses the hopes and aspirations of all persons, but also projects an understanding of equality regardless of ethnic, religious, or cultural affiliation. It is of a particular importance because its realization is an essential condition for effective guarantee and observance of minority rights.

4.2. Proportional Representation and Respect for Minority Rights

Proportional representation in power-sharing serves to ensure the representation of all ethnic groups in the legislature in a post-conflict society (McCrudden & O'Leary, 2013). It inevitably entails significant policy choice that is proportionate to the aim of hindering a certain group from over-

representing the others. This shows that proportionality seeks to maintain a balance between the collective group interest and the rights of individuals. However, such an equitable representation of diverse groups in the legislature may not eliminate entrenched differences but helps to render it more manageable. In Bosnia-Herzegovina proportional representation is ensured through territorial and ethnic participation. The country's Upper House, the House of Peoples is based on equal representation of the three constituent peoples: Bosnians, Croats, and Serbs. Similarly, the House of Representatives are elected by proportional representation where two-thirds of the members are elected from the Federation and one-third of the members elected from Republika Srpska (Europe - Miscellaneous, November 1995).

However, the ethnic formula of proportional representation to the legislative assembly seems an infringement on both international human rights conventions and minority rights to special representation. While the rights of the three main ethnic groups in Bosnia-Herzegovina have been guaranteed under the country's power-sharing arrangement, this has not proceeded in the same direction for what concerns the rights of minorities. The ethnic-based power-sharing may result in political disenfranchisement, social marginalization, cultural devaluation, and economic dispossession. These combinations come together to define the condition of minorities in Bosnia-Herzegovina whose right to proportional representation have been deprived. In effect, when power-sharing runs along ethnic lines, state institutions and resources are then viewed as collective goods exclusively available to those belonging to the right ethnic group.

The unequal sharing of power can then be perceived as ethnic discrimination, because the state apparatus is dominated by some groups while excluding the others. The situation according to Amnesty International (2017/18) has over time laid the foundations for more divisions in Bosnia-Herzegovina civil society. As claimed by the international agency, minorities continued to face social exclusion and discrimination specifically the Roma despite the country's adoption of a progressive Law on Prevention of Discrimination in 2016. Roma continued to face systemic barriers to education, housing, health services and employment as well as obtaining identity documents (Ibid). Such deficiencies undermine the general consensus of promoting minority rights encapsulated under international human rights instruments. In contrast, North Macedonia does not apply a system of reserved quotas for the different ethnic groups as the case of Bosnia-Herzegovina. The country employs non-formal forms of reserve quota representation. The reserved quotas are a tool for guaranteeing the representation of minorities (Bieber, 2005). Yet, minorities continue to struggle for equal representation in governance due to the over-representation of ethnic Macedonians over other minorities (Amnesty International, 2017/18: 244). The right to representation in political and public life are essential in promoting minority rights.

4.3. Mutual Veto and its Impact on Minority Rights

Mutual veto in power-sharing is aimed at ensuring a balance in decision and policy making (McCrudden & O'Leary, 2013). This acts as a check and balance system and has positive effects on the functioning of the state's institutional framework. Minority veto right plays a vital role in channelling and aggregating minority interests and concerns (Bieber, 2005). In Bosnia-Herzegovina veto rights are given to members from the Federation and Republika Srpska in both the House of Representative and the tripartite Presidency (McCrudden & O'Leary, 2013). A member of the presidency can sanction decisions that affect the interest of its members, and the same principle is applied in the House of Representatives. In addition, the resolution of a stalemate resulting from veto is provided under the ad-hoc Committee of representatives from the three constituent groups (Europe - Miscellaneous, November 1995).

Conversely, North Macedonia does not implement such a complex system of veto rights but rather adopts a special majority system for decisions including elements of minority protection. The arrangement guarantees equal participation of both the majority and minority groups in the country's legislature and policies concerning culture, use of language, education, symbols, personal documentation, finances, and local elections (Ibid). The risks of institutional stalemates inherent to co-decision procedures have so far been largely avoided in North Macedonia. In the case of political deadlocks, North

Macedonia Committee for internal relations have to decide by simple majority of the parties. This flexible approach avoids giving veto rights to specific ethnic groups and to settle disagreements through consensus and compromise in the consociational structures (McCrudden & O'Leary, 2013: 27).

Moreover, Bosnia-Herzegovina's ethnically based co-decision members in government have exhibited an inability to create broad-based crosscutting cleavages to consolidate stability and respect for minority rights. There appear to be few political, structural incentives to accommodate the interest of non-constituent groups. However, the mutual veto represented a balance between conflicting interest and a departure from the ideal pattern of the "winner-takes-all arrangements" (Ibid: 5). Indeed, unanimity might exist even though there may be differing interests on separate issues. Yet, the power-sharing system that has been claimed as being irreconcilable with minority rights were also the rules that had made the agreement possible (Ibid). This shows that compromises in decision and policy making is about finding a middle ground between the various ethnic groups (Wippmann, 1998). Thus, the power-sharing arrangement offered the people of Bosnia-Herzegovina a collective right of co-decision, thin enough to accept differences without recourse to violence.

4.4. Segmental Autonomy and Minority Rights

Segmental autonomy in power-sharing aims to ensure that each group enjoys a degree of autonomy over their societal structure and operation (Lijphart, 1997). In addition, it gives all parties including minorities, the right to manage their local areas as a form of participation in the consociational system (McCrudden & O'Leary, 2013). In particular, it allows grassroots participation in the management of certain policy areas such as security, economy, education, and culture. Segmental autonomy constitutes a certain degree of decentralization in policy initiatives, and the right to legislate in matters that concern the autonomous units. It is intended to increase the room of manoeuvre for the local members in the power-sharing arrangement as a result of the transfer of competencies from the central government to local administration.

Devolving powers to the autonomous units strengthen checks and balances as well as set limits on the central government if it oversteps its powers. This form of autonomy is less contentious as it occasions little threat to the territorial integrity of the state. Segmental autonomy has been implemented in diverse ways in Bosnia-Herzegovina. As specified, the Dayton Agreement laid the foundation for two autonomous entities: Federation of Bosnia-Herzegovina and Republika Srpska. A third entity, Brčko District was formed in 1999 as a result of international arbitration approving its autonomy. Conversely, North Macedonia has avoided territorial autonomy and has focused on minority inclusion in local governance and the devolution of power in the areas of culture, religion, and education encapsulated in the Ohrid Accord. It also calls for the establishment of a Committee for Inter-Community Relations in each municipality (National Legislative Bodies / National Authorities, 2001, August 13).

However, limited powers of autonomy have been developed to enable ethnic Albanians to determine their social and cultural development in municipalities where they constitute the majority. Since the Ohrid Accord, significant changes have occurred to strengthen minorities protection. The changes have conditioned the appointment of the Council for Inter-Ethnic Relations to protect minority interests. This Council carries out an advisory function of the Parliament on inter-ethnic matters and is composed of representatives of the various groups including ethnic Macedonians, Albanians, Bosnians, Roma, Serbs, Turkish and Wallachians. In addition, religious liberty is respected as the Orthodox, Islamic, Catholic, Evangelical and Jewish faiths enjoy the right to practice and establish educational and social institutions.

Consequently, Freedom House 2021 global freedom scores based on individual's access to civil and political liberties, assigned Bosnia-Herzegovina an aggregate score of 53 out of 100, where zero is least free and 100 is most free, while North Macedonia scored 66 out of 100. This evaluation suggests that

North Macedonia's consociation appears to favour fundamental rights and freedoms, while Bosnia-Herzegovina's system remains fragile. This invariably hinders the capacity of minorities to exert control over those decisions that affect them. Hence, power-sharing may contribute to stability and nation-building in post-conflict societies but with considerable challenges in upholding the rights of minorities (Wippmann, 1998).

Conclusion

This paper has elucidated that formal and informal power-sharing mechanisms of power-sharing ensure some form of peace and stability rather than conflict. Both cases resonate the destabilising regional elements of political instability and tense inter-ethnic relations before and after the hostilities. This precarious regional situation seems to support the continued implementation of the consociational arrangements. In North Macedonia the role of the political system in aggregating and encouraging minority participation is fundamental. The country's repeated ethnic shocks have considerably conditioned fair play among the political actors. Yet, the contrast between the Macedonian community and the strong Albanian minority is a concern in the political and social life of the country. However, this seems largely under control with the elevation of Albanian to the second official language in the country.

On the contrary, Bosnia-Herzegovina struggles to survive in the guise of an asymmetrical state with an extremely weak centre. Sharing a common vision and cooperation between the internal political actors present a challenge with immense risks to the survival of the state itself. The institutionalization of the ethnic factor necessary for the stabilization of relations between the three entities has resulted in a situation of segregation and an advantage for nationalist parties. The challenge may be linked to the fact that in most post-conflict societies the imperative for peace revolves around a complicated and a tense triangular relationship. Yet, there seems to be no simple set of institutional structures that may build peace, stability, and respect for fundamental rights without necessary conditions. It is in this arena that Bosnia-Herzegovina have relapsed in providing opportunities for meaningful minority participation in the power-sharing mechanism. Respect for minority rights is a shared responsibility and an indispensable element for the promotion and protection of international human rights norms.

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