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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

OPINION ON THE "DRAFT PROPOSAL FOR RULES OF PROCEDURE OF THE ASSEMBLY OF THE REPUBLIC OF MACEDONIA"

adopted by the Venice Commission
at its 51st Plenary Session
(Venice, 5-6 July 2002)

on the basis of comments by

Mr Georg Nolte (Substitute Member, Germany)

I. Introduction

1. This opinion concerns the „Draft Proposal for Rules of Procedure of the Assembly of the Republic of Macedonia“. The translation of the Draft Proposal which is the basis for this opinion is dated „Skopje February 2002“. The Secretariat of the Venice Commission has indicated, however, that the Draft is a version which has informally been agreed upon by the Committee on Procedures of the National Assembly of Macedonia in early May 2002. As requested, the present opinion deals only with issues which relate to the question whether the Draft Proposal correctly implements the (Ohrid) Framework Agreement (Document CDL (2001) 104 of 11 October 2001) and the related constitutional amendments.

II. General Comments

2. The Draft Proposal contains no rules which explicitly deal with the „Committee for Inter-Community Relations“. Such a Committee is provided for in the revised Article 78 of the Constitution of Macedonia. Since this Committee plays a decisive role with respect to disputes regarding the application of the new Article 69 (2) of the Constitution of Macedonia (which concerns the determination of the issues for which a double majority is required) it should be regulated explicitly in the Chapter VIII (Articles 117-133) of the Draft Proposal.

3. In this connection it should also be noted that the Draft Proposal contains no rule to the effect which working body is competent in case of dispute between different working bodies. Article 130 of the Draft Proposal only contains a right for a working body which is not competent to submit an opinion to the competent working body.

4. The Assembly could enact more specific rules concerning the names and competences of its different working bodies in an *ad hoc* manner. Since, however, the Committee for Inter-Community Relations is a constitutionally mandated working body and since the question of determination of competences is a general question it appears necessary that these issues be regulated explicitly in the Rules of the Assembly.

III. Comments relating to specific articles

5. **Article 3**: According to Article 3 (2) of the Draft Proposal a Member of Parliament who „speaks“ a (n official) language „can use that language at the Assembly sessions and at the sessions of the working body“. It has been pointed out to the rapporteur that the word “use” in the draft is a wrong translation and that the correct translation would be the word “speak”. In any case, according to Article 7 (5) of the revised Constitution of Macedonia (if read in connection with No.8 of Annex B of the Framework Agreement) this provision must mean that it applies to any Member of Parliament who is capable of speaking any official language to speak that language, independently of which community he or she actually belongs to.

6. Article 3 (3) gives citizens *of other states* who have been invited to participate in the work of the Assembly the right to speak in their own language. It is not made clear, however, whether citizens of Macedonia who have been invited to participate in the work of the Assembly (and who are not Members of Parliament) have the right to use any official language. Article 7 (5) of the new Constitution provides that any official language other than Macedonian may be used in the organs of the Republic of Macedonia in accordance with the

law. It is recommended that the Macedonian authorities consider addressing the issue in the pertinent legislation at an appropriate moment.

7. **Article 17 (2)** provides that Members of Parliament shall declare, after the verification of their mandate, to which community they belong to. This rule implies that Members of Parliament must declare their community affiliation beforehand, that is for the whole legislative period, without the possibility of changing that affiliation. Such a rule could be questioned on the ground that the Framework Agreement and the pertinent Constitutional Amendments always speak of „Representatives *claiming* to belong to the communities not in the majority ...". This formulation might be interpreted as implying that Representatives must retain a choice. Such an interpretation, however, does not seem warranted. It rather seems necessary for the protection of minority groups and their representatives that group affiliations cannot be changed at any time. This would (theoretically) open a possibility for the majority to circumvent the double majority rule by encouraging some of their own members to switch their affiliation in order to obtain a majority within the minority. Therefore, ultimately, Article 17 (2) is appropriate.

8. **Article 18 (2)** should be amended so as to incorporate the obligation under No. 6.8. of the Framework Agreement.

9. **Article 95 (2)** provides that the Assembly decides by majority ... „unless the Constitution determines a special majority". This is a blanket rule which is designed to incorporate the Framework Agreement-related changes of the Constitution. Here again, it should be made explicit which constitutional provisions are referred to (in particular Article 69 (2) and 114(5)).

10. **Article 107** does not provide for the possibility that there are Members of Parliament who do not belong to a parliamentary group (this may also, and in particular, concern Members who belong to a minority group). Thus, it can happen that Members of Parliament who originally belong to a parliamentary group leave this group without joining another group. In addition, depending on the electoral system it can happen that Members are elected in their personal capacity and not on the basis of party affiliation. Such Members of Parliament should be guaranteed a right to be a member in at least one working group. They should also have the right to make proposals concerning elections. The issue of Members of Parliament who do not belong to a parliamentary group also concerns **Article 118 (4).**

11. **Article 113** serves to implement several Framework Agreement-related constitutional amendments. The Draft article raises a few technical issues which may only have to do with translation:

- Article 113 (2) speaks of the Ombudsman, Article 77 of the revised Constitution speaks of the Public Attorney. It is assumed that these two concepts refer to the same institution.
- Article 113 (3) deals with the election of judges of the Constitutional Court. It should be made clear that the number of judges of the Constitutional Court is nine, as Article 109 (1) of the revised Constitution provides.
- Article 113 (4) deals with the election of the members of the Republic Court. It is assumed that this body is the Republican Judicial Council which is provided for in Article 104 of the revised Constitution. It should be made clear that the number of judges of the

Republican Judicial Council is seven, as Article 104 (1) of the amended Constitution provides.

- Article 113 (2), (3) and (4) all provide that the elections require the „majority votes of the total number of Members of Parliament that belong to the communities that are not majority in the Republic of Macedonia". This formulation deviates somewhat from the formulation in the Framework Agreement and the related constitutional amendments. There the necessary qualified majority is described as „a majority of the total number of representatives claiming to belong to the communities not in the majority in the population of Macedonia". It is understood that the deviation can be explained by the fact that the Draft Rules of Procedure presuppose that the „claim" by a Member of Parliament has been finally made by virtue of Article 17 of the Draft Proposal. This would mean that the different formulation does not imply a restriction of the right of Members of Parliament to choose their group affiliation.
- In a note which is appended to the translation of Article 113 of the Draft Rules the question is raised who of the proposed candidates will be elected with a separate/special majority. This question does not seem to be problematic. The Framework Agreement only provides that a certain number of candidates be elected by a special majority. It would seem that it is a matter of the political process (and therefore in particular for the Members of Parliament which belong to communities which are not the majority in Macedonia) to indicate which candidates are agreeable to them. It is, however, also possible to regulate that candidates to be voted for by double majority be designated in advance.

12. **Article 125 (1)** should include a reference to those Articles of the revised Constitution, in particular Articles 69 (2) and 78, which concern double majority voting. The function of the parliamentary working bodies is to prepare decisions of the Assembly itself. They are therefore composed according to the voting strength of the different parliamentary groups. Normally, when a simple majority is sufficient to pass a law, the decision of a working group accurately reflects the probably majority in the Assembly itself. In those (other) cases, however, in which a double majority is necessary, a simple decision based on a simple majority would be misleading insofar as the position of the relevant minority may not be accurately reflected. It is therefore suggested that a provision be included that in matters in which a working group takes a decision whose implementation would require a double majority the position of the relevant minority should be expressed either in an appendix to the decision or as part of the minutes which must be appended to the decision.

13. **Article 147**: The time limit for producing the reports on the Proposal for passing a law (24 hours after the session of the working bodies) appears to be very demanding. It seems that it is less important how quickly *after* the session a report is produced and more important how early *before* the next session (of any body concerned) the report must be available. The same consideration holds true for **Article 149**.

14. **Article 152**: The same considerations as described for Article 125 (1) are true for Article 152 (2). If the Law in question would require a double majority the Proposal should contain the possibility for the relevant minority to formally state its separate position.

15. **Article 158**: The same considerations as described for Article 125 (1) are true for Article 158 (4). If the Law in question would require a double majority the Proposal should contain the possibility for the relevant minority to formally state its separate position.

16. **Article 173 (2)**: The voting for different amendments according to the order of their submission does not appear to be optimal. The preferable rule would be to vote in the order of the amendment which deviates most from the proposal first (and so forth).

17. **Article 174 (1)**: The same considerations as described for Article 125 (1) are true for Article 174 (1). If the Law in question would require a double majority the Proposal should contain the possibility for the relevant minority to formally state its separate position.

18. **Articles 184 and 185**: The procedure of authentic interpretation of a law is unusual in Western democracies. It must be ensured that this procedure cannot be used as an instrument to circumvent the double majority requirements where they apply. It is therefore necessary to have a provision according to which an authentic interpretation of a law needs the kind of majority which would be needed if the law would be passed as such. Article 185.6 may be interpreted to contain such a rule but this provision should be clearer.

19. **Article 211**: This article raises two concerns:

- The translation speaks of “the Articles for Local Self-Government”. It would be clearer if it would be formulated “the Articles concerning Self-Government” Perhaps this is only a problem of translation.
- Article 77 is missing of the list of those provisions which form part of Annex A of the Framework Agreement (at least in the translation).