

# A Study of the Two Documents that Create the Framework of the Contemporary Relations between Republic of Macedonia<sup>1</sup> and Bulgaria

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## Abstract

The Macedonian and Bulgarian states are two neighboring countries between which there is a rather unique dispute. Namely, the Republic of Bulgaria believes that the Macedonian language and the Macedonians in general, in the past did not exist and in fact were Bulgarians. The non-recognition of a separate Macedonian language by Bulgaria, for many years caused practical problems between the two countries because it was not possible to sign any bilateral Agreement. In order to overcome the previous disputed situations, two legal acts were signed, the Declaration of 1999 and, later, the 2017 Agreement. These two documents provide specific solutions to these issues. In this paper the texts of the two legal acts are analyzed and compared. The solutions provided in these acts form the framework and trajectory of future relations between the two countries. Having in mind the fact that Republic of Bulgaria is also part of the European Union (EU), and its neighbor is only a candidate, there is a danger that bilateral issues will indirectly become part of the package of conditions for EU membership and thus practically go beyond their bilateral character. As we will see below in the analysis of the texts, there is a certain asymmetry in the provisions of these two legal acts, primarily in relation to the Macedonian side. Undoubtedly, there are some positive sides but at the same time certain solutions listed in the two legal acts seem to be a source of new problems in the Macedonian-Bulgarian relations.

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<sup>1</sup> Both of this Treaties were concluded before the Prespa Agreement and the change of the name of the country by adding "North" before "Macedonia".

**Keywords:** Declaration, Agreement, law and politics, Bulgaria, Macedonia, relations, history.

## **Introduction**

Macedonian-Bulgarian relations are specific in many respects, historically speaking. However, some of the modern problems include the official position of Sofia for Macedonians as former Bulgarians, the Macedonian language which is seen as non-existent, or a Bulgarian dialect that is only specially codified. This policy of Sofia also created practical problems in the relations between the two neighboring countries and was often perceived as offensive to the majority of Macedonians. Things are further complicated by the issue of the Macedonian minority in Bulgaria and also the relatively large number of Macedonian citizens who have obtained dual Bulgarian citizenship. Certain solutions to these issues were provided for in the 1999 Declaration and the Good Neighborliness Agreement signed in 2017. The purpose of this paper is to analyze and compare in detail the provisions of the previous two legal acts in order to predict the trajectory of Macedonian-Bulgarian relations. The European future of the region may depend on the previous two legal acts due to the fact that Republic of Bulgaria, as an EU member, can use the veto as an instrument to force the other side to make concessions. Of course, there are certain columns, statements, and particular analysis for these two acts, but so far, no detailed analysis has been made article by article from a scientific aspect as this paper does. The detailed analysis of the provisions of the two legal acts reveals that there are unmentioned positive elements that are to be welcomed. Unfortunately, we can conclude that at the same time we can expect the solutions provided in these legal acts to open new issues in the future instead of closing the old ones. Generally, these are asymmetric acts aimed at the Macedonian side, which require additional statements and cancellations that have either already been given or are part of some other acts. In addition, there is not always reciprocity in relation to the obligations imposed on the Macedonian side. The paper is divided into two main parts that analyze in detail the two legal acts respectively.

## **Study methods**

The research question is following. Namely, we can ask ourselves whether the current two primary acts are a sufficient framework for regulating the relations between the Republic of Bulgaria and the Republic of Macedonia and whether there will be a need for some kind of new agreement or an annex to the existing ones?

In order to give an answer, we have chosen the method of direct qualitative content analysis as the most appropriate. Furthermore, we will compare the articles in the two legal acts. These methods have been applied to the two basic written legal acts that this paper deals with. Namely, the Joint Declaration from 1999 and the Agreement on Friendship, Good Neighborliness, and Cooperation between the Republic of Macedonia and the Republic of Bulgaria from 2017.

Through these methods we try to confirm the hypothesis of this paper according to which the current two official bilateral legal acts, precisely because of some of their

provisions, are not a sufficient framework for regulating the relations between the two states, which is why there will be a need for a new type of agreement or an annex to the existing ones.

### **The context**

In order to understand certain elements that burden the modern relations between the present Republic of Bulgaria and the Republic of Macedonia we must go deeper into history and certain balances of power between the then great powers. Thus, in 1878 Tsarist Russia and the Ottoman Empire sign the Treaty of San Stefano. It is a peace treaty imposed on the Ottoman Empire by the victorious side - Russia. Under this Agreement, the defeated party undertook (among other things) to grant autonomous status to the newly created Bulgarian principality. The idea was that this principality would nominally remain within the Ottoman Empire as a vassal state but still the Sultan would not have real control over this territory. As part of this state the territories of today's Bulgaria should be included, but also almost the entire territory of geographical Macedonia (which was also under the Ottomans). Obviously, this was a project for the formation of Greater Bulgaria, which would be of such scale as to cover almost the entire territory of today's Republic of Macedonia, part of northern Greece and a smaller part of today's Serbia, but also territories of Romania and Albania. The goals of this agreement as well as the peace agreement in this part have never been achieved in practice, primarily due to the reactions of other major powers who feared that the creation of such a large Slavic and Orthodox state in the Balkans would achieve certain aspirations of the Russian politics and practically this new state will act as a Russian satellite (Ray, 2021). During all these events, Macedonia was treated as an object and not a subject in international relations and the Macedonian people in general and did not get a chance to speak out on these decisions<sup>2</sup>. Only three months later, the Berlin Agreement was signed, with which the San Stefano Agreement was practically revised and became internationally and legally invalid. Despite this, the myth of Greater Bulgaria as the largest country on the Balkan Peninsula stretching from the Aegean to the Black Sea continued to live on<sup>3</sup>, and the date of the signing of the San Stefano Peace Treaty is celebrated today as a national holiday in the Republic of Bulgaria<sup>4</sup>. It is exactly the ambitions and pretensions to realize the dream of San Stefano Bulgaria that will tragically drag the Bulgarian state and people into the two Balkan and later the two world wars. According to this Bulgarian myth, the majority population in geographical Macedonia was never anything other than Bulgarian,

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<sup>2</sup> See more in Gaber, 2017

<sup>3</sup> The last example is the congratulations from the Republic of Bulgaria Minister of Defense on the occasion of March 8 with the map of San Stefano Bulgaria in the background (Isovska Manevska, 2021)

<sup>4</sup> Of course, Bulgaria has the right to celebrate this date, regardless of the fact that independence in reality came a little later. But on the other hand, it must be borne in mind that the agreement signed on this date can be understood as irredentist in terms of the territorial sovereignty of as many as 4 neighboring countries of today's Republic of Bulgaria hence the celebration of this day can be understood as a certain provocation.

who speak a dialect of the Bulgarian language. Only after the Second World War and the creation of the Republic of Macedonia as a constituent unit of the Yugoslav federation, official Sofia for the first time recognizes the existence of Macedonians and the Macedonian language and even a Macedonian minority on its territory. At the post-war census in Bulgaria in the part of geographical Macedonia known as Pirin Macedonia, the majority of Bulgarian citizens declared themselves ethnic Macedonians (Poulton, 1994). However, this policy of official Sofia towards the Macedonians was abandoned as early as 1948 after which Bulgaria returns to its old views regarding the (non)existence of the Macedonians and the Macedonian language<sup>56</sup>. This policy of official Sofia continued even after the creation of an independent Republic of Macedonia after the break-up of the Yugoslav federation in the early 1990s to the present day<sup>7</sup>. The Bulgarian positions regarding the Macedonians and the Macedonian language are that (as nebulous as it sounds) they have never existed in history and were simply invented as such after 1944 with a Decree by Josip Broz Tito (Dimitrov, 2004). However, regarding the existence of the Macedonian state, Republic of Bulgaria was the first country to recognize its independence, but at the same time maintained its position regarding the Macedonians and the Macedonian language. Although from the international legal point of view, the states give or do not give recognition in relation to other states and governments, still official Sofia tried to “invent” recognition to the state but not to the people and the language. Of course, such views of Sofia caused practical problems between the two neighbors, primarily due to the fact that no agreement could be signed between them due to the refusal of Sofia to sign an agreement in Macedonian<sup>8</sup>. Finally, a kind of mitigation of these differences was found in the 1999 Declaration and later on the Agreement on friendship in 2017. Of course, the circumstances during the signing of two documents were quite different. In 1999, both countries were outside NATO and EU while in 2017, Republic of Bulgaria was already a full member of NATO and EU while Republic of Macedonia was just a candidate. Having on mind the right of veto and the other privileges of been a member of these two organizations, it is obvious that the position of the Republic of Bulgaria was far more stronger than on the Republic of Macedonia in 2017.

### **About the Declaration**

The Joint Declaration was signed by the Prime Ministers of the Republic of Bulgaria<sup>9</sup> and the Republic of Macedonia in 1999. It is a bilateral legal act between two

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<sup>5</sup> As an indirect consequence of the decreasing the level of the relations between Tito's Yugoslavia and the Stalin USSR (Stavrianos, 1964)

<sup>6</sup> For more see Mahon, 1998

<sup>7</sup> Thus, according to one of the recent interviews given by the current Minister of Foreign Affairs Ekaterina Zaharieva, the Macedonian language (although the reality can be recognized under certain conditions) was created in 1945 based on the Western Bulgarian dialect, with some changed words and slightly changed grammar. The journalist calls the language Northern Macedonian, which is modified with words from Serbian, with which the Minister agrees (Kanal 3 TV, 2021).

<sup>8</sup> For more see Maleski, 2013

<sup>9</sup> That is, Minister-President - such as the official title of Prime Minister of Bulgaria.

neighboring countries that regulates their relations. In this particular case, it is a Declaration, i.e., a legal document without any major legally binding meaning, which in a technical manner regulates historical-political problems. That is why there are no articles for possible court resolution in case of a dispute or any mechanism for resolving possible disputes arising from the Declaration. The logic of things suggests that the Declaration would one day be replaced by an Agreement, which was the case in 2017. Even so, this Declaration played a major role in regulating Bulgaria's open issues with its neighbors in the run-up to its EU integration<sup>10</sup>. On the other hand, this Declaration was in line with the promoted policy of "positive energy" towards the neighbors of the Prime Minister of the Republic of Macedonia, Ljupco Georgievski<sup>11</sup>. Otherwise, it is interesting to mention that the above-mentioned Prime Minister was for many years the leader of one of the two largest parties in the Republic of Macedonia known as VMRO-Democratic Party for Macedonian National Unity (VMRO-DMPNE). Although he vigorously denied the numerous attacks on him, in the years spent in the opposition, for being a bulgarophile, it is interesting to note that the signatory of the Declaration from the Macedonian side still states that 50% of his government were bulgarophiles and he is placed in that framework (Eftov, 2019). Hence, there is an inevitable conclusion that the Macedonian interests in the Declaration with Bulgaria were represented by bulgarophiles. However, in order to be objective, it is worth noting that the text of the Declaration was largely negotiated during the mandate of the previous government led by SDSM. Otherwise, the Declaration itself is not a comprehensive document at all. Namely, it is barely 11 articles, which we will discuss in detail below.

The title of this document is "Joint Declaration of the Minister-President of the Republic of Bulgaria and the Prime Minister of the Republic of Macedonia".

This Declaration begins with an introductory (preamble) which lists certain formulations that should form the spirit of the Declaration.

This is the beginning of the common pursuit of good neighborliness between the two neighboring countries. The need for development of cooperation is emphasized, which should be based on mutual respect, trust and understanding, and also mutual respect for the interests of their respective countries and peoples. The previous formulation is especially important because it can be interpreted that Bulgaria, in addition to recognizing the independent state of the Republic of Macedonia, recognizes a special people living in that country.

Of course, everything is put in the context of strengthening wider security, peace, cooperation and trust in the region of Southeast Europe, and in accordance with the commitment of both sides to integrate into European and Euro-Atlantic structures. It should be noted that at the time of writing this Declaration, neither side was a member

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<sup>10</sup>Closing open issues with the neighboring countries is a practical EU request to its future members. Hence, with the signing of this declaration, it can be considered that Republic of Macedonia help Republic of Bulgaria at a significant moment for her (Janjatov, 2020)

<sup>11</sup>In the office 1998-2002.

of the EU and NATO<sup>12</sup>.

The belief of both parties in the constructive dialogue as a means in bilateral relations to solve regional and international problems that will contribute to the improvement of relations between the two countries on an equal footing is emphasized.

All the previously stated aspirations and goals will be implemented in accordance with the principles of the UN Charter, as a universal world organization of which both countries are members and also the documents and democratic principles of regional international organizations operating on European soil, where both countries are equal members as OSCE and Council of Europe.

The first article of this Declaration is practically a follow-up, reaffirmation, and formulation of a section of what has already been said in the introduction, but now is in the basic text of the Declaration. Practically, Article 1 states that both sides express their desire and also readiness for the development of the overall mutual relations, and it is emphasized once again that they will be developed in accordance with international law and its basic principles. This shows the intention of the Declaration and also its subject which is a more general and comprehensive cooperation in order to develop relations between the two neighbors, and not some particular concrete cooperation in only one specific area. It is previously confirmed with the following members who talk about economic and trade cooperation, cooperation in the field of tourism, cooperation in the field of connectivity and traffic, cooperation in the field of education, culture, social, health, sports, legal, and consular sphere.

According to the second article, the parties declare that they will cooperate within international organizations such as the UN, OSCE, Council of Europe, and also various forums and initiatives such as The NATO initiative entitled Partnership for Peace, the multinational peacekeeping force of the countries of Southeast Europe and others that are not listed in detail. Hence, in accordance with Article 2 of the Declaration, the two sides will cooperate not only in bilateral relations and at the local level, but also in their activities within international organizations, forums, and initiatives.

Article 3 practically formulates part of what has already been said in the introduction, specifically about the contribution of both countries in the context of developing cooperation, promoting understanding, peace and stability in the wider region of Southeast Europe, and in implementing regional projects to support the creative process of a single Europe. Although a broader interpretation may be given, we previously understood it primarily in the context of contributing to the process of future EU enlargement with the Balkan countries, including Bulgaria and Macedonia.

Article 4 is the first article of this Declaration which consists of two paragraphs. In the first paragraph, both parties declare that they will encourage contacts and will

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<sup>12</sup>The Republic of Bulgaria became a member of NATO in 2004 and the EU in 2007. While the Republic of Macedonia is a NATO member since 2020, it is not yet a member of the EU.

organize meetings between representatives of the governing bodies at different levels. The second paragraph builds on the first by expanding the scope of the NGO sector and the citizens of both countries, which will also be encouraged to greater contacts, namely both sides declare an intention to contribute encouraging contacts in this particular aspect. All in all, the purpose of Article 4 is to encourage greater contacts both at the governmental level and between the non-governmental sector in the two countries in order to develop cooperation and friendly relations.

Article 5 has mainly economic goals and, as key in that direction, it states that both parties endeavor to smooth movement of capital, goods and services, between the two countries. To achieve this goal, both parties will strive to create the necessary logistical conditions of a legal, economic, financial, and commercial nature. In this direction are the encouragement and protection of joint investments. It is interesting to note that at the very beginning of this article, as a kind of precondition or motivator for all this, geographical proximity between the two sides is stated.

The sixth article expands the envisioned cooperation specifically in the field of tourism, which in turn is a kind of follow-up to Article 4 in terms of encouraging contacts, primarily between citizens and to some extent Article 5 in terms of achieving appropriate economic goals in that tourism can also be an important branch of economic development. Article 6 states that both parties will encourage tourism exchange and the development of appropriate forms of cooperation in the field of tourism.

In the next article, Article 7 paragraph 1, the two contracting parties declare that they will develop and improve the traffic connections and communications between them and within the framework of the regional infrastructure projects. With this in practice, the contracting parties will cooperate on a bilateral level and also as part of wider regional projects in the field of infrastructure. The second paragraph states that the parties will also strive to facilitate customs and border formalities for the movement of passengers and goods. This article is a completely logical continuation of Article 5 and Article 6 because they are difficult to apply without the existence of modern traffic links. Additionally, the real situation on ground and the existing relations at the time of signing the Declaration imposed a great and real need for such a provision for cooperation in this field. Unfortunately, many years after the signing of this Declaration, the situation with the traffic links has not changed much in a positive direction. As an illustration, it is enough to look at the roads to the border crossings, the border crossings themselves, and the unfinished railway<sup>13</sup>. Regarding the second paragraph of this article, unfortunately we can also conclude that no special progress was made in the years when it was possible, i.e., while Bulgaria was not a member of the EU, because special regulations apply to it after its entry into the union; thus, it must respect towards non-member states.

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<sup>13</sup>see Dimoska's analysis (Dimoska, 2021).

Article 8 provides that the Contracting parties shall encourage cooperation in a number of fields, such as culture, education, health, social care, and sport. This article builds on Article 1 which states that the purpose of this Declaration is to develop a mutually beneficial relationship between the two Contracting parties. However, from today's point of view, except for some modest occasional movements in this direction, no significant shifts in cooperation in all these areas have been noticed.

The ninth article deals with the issue of free flow of information (paragraph 1) and the protection of copyright and intellectual property rights of authors from both countries (paragraph 2). According to this article, the parties declare their efforts to enable the free flow of information between them, primarily by encouraging and developing cooperation in the field of press, radio and television. From today's aspect, we can conclude that this article, in terms of its realization, experiences the fate of the previous articles and very little has been done in this direction.

The tenth article of this Declaration develops a logical conclusion to all the above by declaring the contracting parties will promote cooperation in the legal and consular spheres, especially in the areas of civil, criminal, and administrative matters. The purpose of this article is to facilitate travel, visits to its citizens, and solving their humanitarian and social problems through enhanced cooperation in these areas.

Finally, in relation to Article 11, the last of this Declaration, we can say that although it is particularly interesting for analysis and it deserves special attention, it is also atypically long (compared to any previous article in the same Declaration). Another feature is that it contains provisions of a different nature. Thus, in its six paragraphs can be found provisions of a security nature (paragraphs 1, 2 and 3); a provision with political but to some extent legal implications (paragraph 4); provisions for preventing malicious propaganda, violence, hatred and the like (paragraph 5); as well as final provisions (last paragraph).

The first paragraph states that both parties will not undertake, encourage or support actions and activities of a hostile nature toward each other. This obligation also applies to non-encouragement and non-support of such activities performed by a third party, which is visible from paragraph two.

The second paragraph is specific in the obligation that neither of the contracting parties will allow, now and in the future, its territory to be used by organizations and groups that aim at subversive and separatist actions directed against the peace and security of the other party. Otherwise, this position is only a confirmation of the already existing position of the Republic of Macedonia built and directed in general to all its neighbors since 1999 during the NATO bombing of Yugoslavia<sup>14</sup>. According to this position, the Republic of Macedonia will not allow its territory to be used against any neighboring state. The very fact that Bulgaria is a neighboring country means that this

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<sup>14</sup>For more, see Marolov, 2015



position is valid, but there is nothing disputable with what is stated in the Declaration specifically regarding the Republic of Bulgaria, especially because this is a reciprocal obligation and applies to the Republic of Bulgaria to the Republic of Macedonia.

With the third paragraph of this article, in a rather short, simple and imperative manner, the two contracting parties declare that they do not have now and will not show in the future territorial claims to each other. Practically, this paragraph determines the existing boundaries between the two neighbors as permanent and unchangeable. As before, Macedonia already had a legal position on this. Item 1 of Amendment I reads "The Republic of Macedonia has no territorial claims to neighboring countries." Having in mind this formulation, i.e., the fact that the Republic of Macedonia has given up any territorial claims to all its neighbors with its highest legal act, we can conclude that although it has already been declared once, there is nothing disputable that such a formulation stands in the Declaration itself. Of course, the fact that such an obligation is reciprocal, i.e., given from Bulgaria to Macedonia, is also to be welcomed. In any case, this position is a significant contribution to peace, security, and safety for the two neighboring countries as well as for the wider region. This is because the Bulgarian side renounces claims to the territory of the Republic of Macedonia to which it historically had certain ambitions and was even directly involved in military actions over<sup>15</sup>. On the other hand, this article is important for Bulgaria due to the existence of certain of its doubts and fears about possible interference of the Republic of Macedonia in its internal affairs, more precisely in southwestern Bulgaria (known as Pirin Macedonia) in which according to the 1946 census, the Macedonian ethnic population was in the majority and where, to this day, there are attempts to register Macedonian parties and associations<sup>16</sup>. Otherwise, the position of official Sofia is that there is no Macedonian minority on the territory of the Republic of Bulgaria (Damovski, 2020).

It is in this context that the fourth paragraph of this Declaration relates that the Republic of Macedonia declares that nothing of its Constitution can (neither now nor in the future) be interpreted as a basis for interference in the internal affairs of the Republic of Bulgaria in order to protect the status and rights of persons who are not citizens of the Republic of Macedonia. Of course, we can assume that such a formulation was requested by the Bulgarians. It is this attitude that especially attracts our attention and raises several dilemmas and questions. First, why is it required from the Republic of Macedonia with a concrete position to further confirm that it will not interfere in the internal affairs of a neighboring country when it is an international principle established by the UN Charter, where both Macedonia and Bulgaria are members. Practically, the Republic of Macedonia is bound by the principle of non-interference in the internal affairs of other countries with the membership in the UN. In fact, the Declaration itself refers to the UN Charter in its introductory section. Additionally, the Macedonian Constitution itself contains practically the same provision aimed at any neighbor. Thus, in accordance with

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<sup>15</sup>In various military actions against other countries because Republic of Macedonia was not yet a subject of international law in periods such as the First and Second Balkan Wars, the First and Second World Wars (Hoppe, 1986).

<sup>16</sup>See Ratevski's analysis (Ratevski, 2021).

Amendment II, point 1, it says the Republic will not interfere in the sovereign rights of other states and in their internal affairs. Second, when such a one-sided statement is already required from one side (Macedonia), the question arises why there is no reciprocal statement in the Declaration from the other side (Bulgaria)? Perhaps this is where the asymmetry of the Declaration is reflected and we can claim that the principle of equality between two international entities has been violated to some extent. Third, this particular article raises certain legal dilemmas. The question is whether a bilateral Declaration, signed by the Prime Minister, as a member of the executive branch, can determine the interpretation of the constitution. This actually the responsibility of the Constitutional Court of Republic of Macedonia. Finally, paragraph 4 of Article 11 opens the question of who actually are those persons for whom Republic of Macedonia could be more interested in their status and rights who are not its citizens and why did Bulgaria insist on such a provision at all? We can assume that these are citizens of Republic of Bulgaria who declare themselves to be ethnic Macedonians and who have made several attempts to register certain associations. Hence, this results in Bulgaria's fear of possible interference by the Republic of Macedonia of the status of these persons. However, from a legal point of view, this statement does not have any essential significance for them because they are citizens of the Republic of Bulgaria. As a result, their rights and status depend on the national legislation and not on the position of the neighboring country. But let us not forget that Bulgaria is also a European country, a member of the Council of Europe (whose documents and democratic principles are invoked in the very introduction of this Declaration) and a signatory to the European Convention on Human Rights (ECHR). Hence, its citizens should enjoy all the rights of the ECHR, regardless of the "renunciation" of the neighboring country. By insisting on such an article and that is only directed toward Macedonia: Does Bulgaria in a way indirectly recognize the existence of a certain Macedonian minority on its territory (in whose rights and status the Republic of Macedonia might be interested)? It is true that the Bulgarian constitution does not recognize national minorities, i.e., does not operate with that term, but on the other hand, it cannot derogate the rights of its citizens for free detention in accordance with the ECHR. In fact, the several verdicts against Republic of Bulgaria from the European Court of Human Rights say that much<sup>17</sup>.

With the next paragraph, both sides declare that they will take effective measures to prevent malicious propaganda by state institutions and agencies. Additionally, this paragraph refers to the activities of private persons aimed at inciting hate violence which would harm mutual relations. In any case, the provision is valid for both parties and is to be welcomed, especially in the part of the operation of state institutions and agencies, while in the part of private persons it may open a legal dilemma for the manner in which

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<sup>17</sup>See the judgment of 19 January 2006, United Macedonian Organization Ilinden et al. (application no. 59491/00); judgment of 18 October 2011, United Macedonian Organization Ilinden et al. (No. 2) (application no. 34960/04); judgment of 11 January 2018, United Macedonian Organization Ilinden et al. (No. 3) (application no. 29496/16); judgment of 11 January 2018, Jordan Ivanov and others (application no. 70502/13).

these activities will be recognized as such and as it will be determined whether they have the capacity to harm the relations between the two neighboring countries.

The last provision is final and transitional, i.e., technical. This is where the date and place of signing are stated, and at the same time it is stated that there are two original copies and both texts are of equal importance and each of them are in the official languages of the respective countries. At the end of the Declaration follows the corresponding signatures of the prime ministers of the two countries. However, such a seemingly insignificant technical provision is practically essential for the political interpretations regarding the Declaration. We know that the Republic of Bulgaria was the first to recognize the independence of the Republic of Macedonia in the early 1990s. However, during the recognition of independence, the position of Bulgaria was that such recognition does not mean the recognition of the Macedonian language. This is because, according to the Bulgarian official position, such a language does not exist. Of course, this logic of thinking goes beyond the framework of ordinary international relations and international law where it is common to recognize and non-recognize states but not languages. Bulgaria has maintained its position to this day, and the wording used in the Declaration "(...) each of them in the official languages of the respective countries - Bulgarian, in accordance with the Constitution of the Republic of Bulgaria and Macedonian, in accordance with the Constitution of Republic of Macedonia, (...)” is practically a kind of compromise solution with which Bulgaria only recognizes the factual state of existence of (recognized by it) the Republic of Macedonia, which has its own constitution which states that the official language in it is Macedonian. Practically, Bulgaria can claim in this way that it still does not recognize the Macedonian language, but only recognizes the fact that the Constitution of the Republic of Macedonia operates with the term "Macedonian language". But on the other hand, the Macedonian side can claim that Bulgaria with this Declaration finally recognized the existence of a separate Macedonian language, even though it was only a constitutional category.

We can conclude that Article 11 consists of several components, as well as a provision of final and transitional character which in fact hides the essential compromise clause regarding the Macedonian language. Hence, it would probably be much more practical for Article 11 to be divided into several articles but obviously the two contracting parties thought differently.

### **About the Agreement ...**

The title of this document is the “Agreement on Friendship, Good Neighborliness, and Cooperation between the Republic of Macedonia and the Republic of Bulgaria”. From the two identifying elements of the title, we can conclude that (1) it is a legal act - Agreement (which has more legal weight than the previous Declaration) and (2) it regulates issues or matter aimed at friendship, good neighborliness, and cooperation between Republic of Macedonia and Republic of Bulgaria. It is clear that this is a bilateral Agreement.

The Agreement begins with the definition of the term "contracting parties”, which refers to the Republic of Macedonia and Republic of Bulgaria. The motive for concluding

the Agreement is the joint aspiration for further development of good neighborliness, friendship and cooperation between the two countries, as the very title of this Agreement reads. Otherwise, the Agreement, in its preamble, refers to the Declaration of 1999. In fact, most of this Agreement is built on the foundations established by the 1999 Declaration and is practically identical. Hence, in the analysis of the preamble of the Agreement, as in the other parts of it, we will focus only on those parts that are different or have new elements in relation to the Declaration, which we have previously processed. The preamble emphasizes the belief that the comprehensive development and deepening of friendly good neighborly relations corresponds to the interests of the peoples of both countries. Terminologically, this can be a bit confusing. When the term "peoples" is used instead of "nations", then probably the wording Macedonian and Bulgarian people would have been much more correct instead of the phrase used, "the interests of the peoples of the Republic of Macedonia and the Republic of Bulgaria". However, we can assume that this is a compromise solution between the two countries<sup>18</sup>. The preamble itself welcomes the aspiration of the Republic of Macedonia for integration into European and Euro-Atlantic structures. This is a different formulation from the corresponding part used in the introduction to the Declaration. The difference in formulation is based on the factual situation. At the time of signing the contract, Republic of Macedonia is not a member of either the EU or NATO, while Republic of Bulgaria is a member of both organizations<sup>19</sup>. Otherwise, the preamble of the Agreement states that the common history that connects the two countries and their peoples is taken into account. The term "common history" is not mentioned even once in the Declaration, which only speaks of geographical proximity. Unlike the geographical proximity which is an indisputable fact, the mention of the common history provoked numerous reactions and also different interpretations<sup>20</sup>.

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<sup>18</sup>Although this is not always common in foreign languages, the Macedonian language still distinguishes between people and nation. According to certain Bulgarian claims, the Macedonian people are separate and do not exist because they are part of the Bulgarian people. So we assumed that the Bulgarian side insisted that instead of "Macedonian and Bulgarian people", it is the wording "the peoples of both countries." All previous terminological complications would have been avoided if the term "nation" or "Macedonian and Bulgarian nation" had been used.

<sup>19</sup>With the appropriate rights and obligations arising from the membership as e.g., veto power to admit new members of the Bulgaria in the EU.

<sup>20</sup>As will be shown later, according to the Macedonian interpretation, "common" actually means shared history, but on the other hand, the Bulgarian interpretation is that "common" means Bulgarian history. For example, see the interview with the former Bulgarian president Georgi Prvanov (The ex-President of Bulgaria: The concept of "common history" between Northern Macedonia and Bulgaria has not moved from a standstill !, 2021). Retrieved 22 December 2021, from <https://fokus.mk/eks-pretседatelot-na-bugarija-kontseptot-zaednichka-istorija-pomegu-severna-makedonija-i-bugarija-nema-mrdnato-od-mrtva-tochka/>.). With a great deal of probability, we can assume that the request for a provision on a common history was initiated by the Bulgarian side because official Sofia does not hide that it considers the Macedonians to be an artificial creation with Bulgarian roots, regardless of the fact that this position may be offensive and racist.

The rest of the preamble is identical to that of the 1999 Declaration.

The first article of this Agreement is only a slightly adapted version of the 1999 Declaration. The difference is that in the Declaration, both sides express their readiness and mutual desire to develop the overall relationship, while the Agreement states that both parties will develop a comprehensive relationship. Hence, we will not dwell on this section with additional comment outside of what we have already written about Article 1 of the Declaration.

The second article consists of two points. The first point is practically identical to the second article of the Declaration. However, the second point is something new not found in the Declaration and is based on the real factual situation. Namely, in the preamble of the Declaration, it was stated that both countries have a commitment to integrate into Euro-Atlantic structures. In the meantime, that commitment was realized for the Republic of Bulgaria but not for the Republic of Macedonia. Hence, the preamble of the Agreement states that Bulgaria welcomes the aspiration of the Republic of Macedonia for integration into Euro-Atlantic structures. This provision of the preamble is reflected in Article 2, point two, where it is stated that Bulgaria, as a member of the EU and NATO, will cooperate with the Republic of Macedonia in this area in order to successfully prepare the Republic of Macedonia for membership into various international organizations. The Bulgarian side undertakes to share its experience in order to help the Republic of Macedonia in meeting the necessary criteria for EU membership. Regarding NATO, it is clearly stated that the Republic of Bulgaria will support the Republic of Macedonia to receive an invitation to join NATO. Point 2 of this article is strongly in favor of the Republic of Macedonia, but an in-depth analysis will show the fact that the Republic of Bulgaria legally binding to support the Republic of Macedonia to receive an invitation only to NATO<sup>21</sup>. However, there is no clear formulation in which Republic of Bulgaria is legally binding to support the Republic of Macedonia to enter the EU.

The third article of the Agreement is essentially the same as the third article of the 1999 Declaration which has already been processed in the previous section.

The fourth article consists of two points. The first point is almost identical to the first paragraph of the same article of the 1999 Declaration. The only difference is that the Declaration states "they will encourage contacts" while the Agreement states "they will maintain contacts". Although essentially the same, the wording used in the Agreement is stricter and more binding. However, there is a change in the second point where the Declaration stated that both parties will contribute to fostering contacts between NGOs and citizens. That provision in the Agreement reads as follows, "(...) will help maintain contacts between local authorities and citizens (...)". Hence, it seems right for the cooperation and contacts between the non-governmental sector to be left to the non-governmental sector itself. As we have already said, the Agreement added that the two sides will help maintain contacts between local authorities, something that was not

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<sup>21</sup> Something that was certainly considered a done deal once Republic of Macedonia resolved the dispute with Greece.

explicitly stated in the 1999 Declaration.

Article 5 of the Agreement is essentially identical to Article 5 of the Declaration in that it is adapted to the new factual situation at the time of signing, which is that Republic of Bulgaria is already a member of the EU and thus must comply with certain rules regarding the movement of goods and services as well as capital to third countries. Hence, the provision for ensuring "smooth movement", which was used as a desired goal in the Declaration, has now been replaced by the wording "providing the widest possible movement". Otherwise, it is noticeable that in the Declaration, this provision refers to the capital, goods and services, literally in that order, while in the Agreement the order is changed and the "capital" is moved on the third place.

Article 6 and Article 7 of the Agreement are identical in content with the corresponding articles of the Declaration, and the same can be said for Article 8, but only in relation to its first point. However, Article 8 of the Agreement has been extended by two new points which do not exist in the relevant article in the Declaration. Thus, the second point states that the two contracting parties will form an expert commission for historical and educational issues, which should submit an annual report on its work to the governments of both parties. This commission will be multidisciplinary and established on a part-time basis. Its purpose will be to deepen mutual trust and contribute to the objective and scientific interpretation of historical events, though it does not specify which of the historical events. This interpretation should be based on authentic and evidence-based historical sources. There is a deadline by which this commission should be formed, which is no later than three months from the entry into force of this Agreement. The analysis of the second point opens several dilemmas. Perhaps it would be more appropriate in terminology if instead of "interpretation", there was another word such as "determination" or "consideration". This is because "interpretation" is very subjective and the purpose of this attitude is to contribute to objectivity in relation to historical events. It would simply be much easier and more logical for the commission to determine the existence of facts acceptable to both parties than to interpret them in one way or another<sup>22</sup>. Additionally, the question arises what if, for a specific historical event, the commission cannot agree on a common interpretation? Of course, this should be included in the report that the commission submits to the governments every year. Could that fact be interpreted as the commission not doing its job successfully? Did anyone assume in advance that the members of the commission must agree on each issue and give a common interpretation? Does not such a hypothetical situation give Bulgaria the right to say that the Agreement is not being fulfilled and to use the veto power it has from

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<sup>22</sup>For ex. the Ilinden's uprising of 1903 aim was undoubtedly to create an autonomous Macedonia (as a transitional phase), a fact indisputable to everyone. Of course, the representatives of both sides could agree on this if the facts were simply established and stated. But the question is how the commission will harmonize to interpret objectively what was the ultimate goal of the insurgents when, according to some Macedonian historians, the ultimate goal was the creation of an independent state. Also, according to some Bulgarian historians, the ultimate goal was annexation to Bulgaria.

NATO / EU membership? Simply put, the obligation to report to both governments is far from the real equality of the parties when, in practice, only one has the instrument of veto in its hands. The previous logic is applicable to the parity representation of the members of the commission. Of course, it is indisputable, but if the Bulgarian and Macedonian views are taken into account, it is clear that questions from the Macedonian history, i.e., historically prominent people from Macedonia, will be on the table.

Point 3 prescribes the organization of joint commemorations of common historical events and personalities, in order to strengthen good neighborly relations in the spirit of European values. This attitude in itself can be hailed as advanced and European because if we start with a well-meaning interpretation of it, common historical figures for two neighboring countries can be found in many parts of the world and Europe, and especially in the Balkans and between the two neighbors Republic of Macedonia and Republic of Bulgaria. However, considering some of the Bulgarian views with a high degree of probability, it can be expected that there will be persons and events from Macedonia regarded as common. However, the Bulgarian side does not hide that by "common", it means Bulgarian.

Articles 9 and 10 of the Treaty are essentially the same in substance as the corresponding Article 9 and Article 10 of the Declaration, with the previous two paragraphs of Article 9 in the Declaration now practically merged into a single paragraph in Article 9 of the Agreement. Article 10 of the Agreement does not state, as one of the objectives, "facilitation of travel and attendance" as explicitly stated in the same article in the Declaration. It is likely that both sides thought that this was assumed as a goal in accordance with the other articles of the Agreement such that there is no need to emphasize it.

The first three paragraphs of Article 11 of the Agreement is essentially identical to the corresponding three paragraphs of the Declaration. However, the Agreement introduces a new clause in item 4 which states that each of the contracting parties has the right to protect the rights and interests of its citizens, on the territory of the other contracting party, and in accordance with international law. We can assume that this was introduced at the request of the Bulgarian side in order to emphasize their right over the Bulgarian citizens on the territory of the Republic of Macedonia. Consequently, such a provision was not provided for in the Declaration at a time when both countries were not members of the EU and NATO. However, in the period from the Declaration to the Agreement, as we have already said, Bulgaria became a member of NATO and the EU, which was followed by a relatively large number of requests for Bulgarian citizenship by Macedonian citizens<sup>23</sup>. In any case, this is just a reaffirmation of something that is

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<sup>23</sup>The Macedonian legislation, as well as that of Bulgaria, does not prohibit dual citizenship for its citizens. Bulgaria's entry into the EU meant that Bulgarian citizenship is automatically an EU citizenship with which one can travel and work freely in the EU, hence the desire of many Macedonian citizens to obtain Bulgarian citizenship. Of course, we cannot rule out that some Macedonians with Bulgarian passports asked for the same because of ethnic Bulgarian feelings (although there is a difference between the institute of citizenship and national affiliation as a feeling),

implied in international law, namely that every state has the right and duty to take care of its citizens until this institute is used as a tool to interfere in the internal affairs of other states, which is contrary to international law. Point 5 of the Agreement is essentially identical to paragraph 4 of the Declaration in which Republic of Macedonia declares that nothing of its constitution can be interpreted as a basis for interfering in the internal affairs of Republic of Bulgaria. The former remains the same with the fact that instead of the word "declares" used in the Declaration, the word "confirms" is used in the Agreement. The previous terminological change is logical in the sense that the Agreement only confirms what was previously stated in the Declaration. The last point of this article of the Agreement is essentially identical to the last paragraph of the same article of the Declaration in that in the part that speaks of private persons, the term "will discourage" is now used instead of "will not allow" as stated in the Declaration, which seems to be a better solution than what we have already commented on above.

Article 12 of the Agreement is not in the Declaration. It is a two-point article that provides for the establishment of a type of body under the name of the "Joint Intergovernmental Commission". The first point gives a specific deadline for the establishment of this Commission and determines its composition, while the second point determines the competence and manner of the commission's work. Thus, a period of three months is given from the entry into force of this Agreement, and the composition is determined so that it includes senior officials of both countries. The foreign ministers of the two contracting parties were appointed as co-chairs of the commission. The competence of this commission will be an overview of the effective implementation of this Agreement and measures to improve bilateral cooperation, but it will also have a mandate to resolve issues that may arise during the fulfillment of the Agreement. Otherwise, the commission will hold regular meetings at least once a year. If necessary, additional meetings can be organized at the proposal of either party. According to Article 12 of the Agreement, the parties have determined a certain mechanism in case of dispute. That mechanism is primarily in depends on the Joint Intergovernmental Commission instead of the International Court of Justice, which is the common practice in international treaties. Probably, by defining such a mechanism, the parties wanted to symbolically demonstrate their high level of mutual trust. Of course, this does not exclude the possible jurisdiction of the International Court of Justice automatically in case of additional consent from both parties.

Article 13 of the Agreement contains the content of the transitional and final provisions. It consists of three points that determine the moment of entry into force, i.e., the duration, the manner of possible changes in the text, as well as the possibilities for termination of the contract. Thus, the first point determines that the Agreement enters into force on the date of exchange of the ratification instruments and remains in force indefinitely. The second point prescribes the possibility of changes in the contract only with the written consent of both contracting parties. The third point states the possibility

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although it is symptomatic that they did not ask for it before the entry of Republic of Bulgaria into the EU. In any case, citizenship is a different institution from ethnicity, and the new Bulgarian citizens remained Macedonian citizens at the same time.



for termination of this Agreement through written notification from one side to the other, where it is specified that the Agreement will cease to be in force exactly one year after receiving that notification. Hence, it is clear that in order to change the contract, the consent of both parties is required (paragraph 2), while for the termination of the contract, the existence of a will on only one side (paragraph 3) is sufficient.

Article 14 states that this Agreement shall not be interpreted in any way as contradicting other Agreements (bilateral or multilateral) where one of the parties is one of the signatories to this Agreement.

Finally, at the very end of the Agreement is the place and date of the census (01.07.2017 in Skopje), explaining that the Agreement has two original copies each in the official languages of both parties, with both texts being equally important followed by the signatures of the prime ministers of the two countries. It is noteworthy that with regard to the designation of official languages, the same wording used in the 1999 Declaration stands, which we have already commented on in the relevant section. The same comments apply to this section.

### 3.5. Conclusion

Signing legal acts that regulate relations and solve problems between states is a normal and civilized event. However, no Agreement will solve the problems if there is no sincere will, no matter how you title that Agreement. In any case, we can freely conclude that the basis for regulating the relations between the Republic of Macedonia and Republic of Bulgaria is contained in two legal acts, the Declaration of 1999 and the 2017 Agreement. Regarding the two documents, we can conclude that although the equality of the parties, states as equal subjects in international relations, is formally observed, we still believe that there is a certain asymmetry in relation to the Republic of Macedonia. Thus, by Republic of Macedonia statements and guarantees are given that are already listed as part of its highest legal act, the Constitution of the Republic of Macedonia. Furthermore, as we can see in both documents, there is a provision on the manner of interpretation of the Macedonian Constitution, i.e., the "waiver" by the Republic of Macedonia regarding the Macedonian minority in Bulgaria, while no such reciprocal obligation is provided for Bulgaria. The Agreement goes one step further than the Declaration and provides for the establishment of a multidisciplinary commission tasked with interpreting historical events which is accountable to the governments of both countries. We should mention that ironically, although one of the goals of Article 8, point 2, is to achieve objectivity, it is the interpretation that always carries a certain subjectivity. Although this provision seems to reflect the formal-legal equality of the two sides, this is not the case at all, given that Bulgaria at the time of signing the Agreement was a member of both NATO and the EU and the Republic of Macedonia had only clearly stated ambitions for membership in the same organizations. Hence, the "evaluation" of the work of the commission by both governments is practically an instrument only in the hands of the government of Republic of Bulgaria which could use a possible allegation of non-compliance with the Agreement and the veto power in these organizations to coerce the actions of Macedonia. Such provisions presuppose the consent of the Macedonian representatives in the commission for any interpretation and any issue,

thereby risking their opposing position being interpreted as an example of non-functioning of the commission and breach of the Agreement.

Finally, both in the Declaration and in the Agreement, an attempt was made to pass in the part of final and transitional provisions as a simple technical issue, which is probably the key compromise on the Macedonian language. On the one hand, the Macedonian language is reduced to a constitutional category, but on the other hand, this is also the recognition of the same by the Bulgarian side.

We can conclude that these two treaties and their provisions basically have the same text. In so many cases the articles are nothing more than copy/paste. However, the Agreement has some additional elements that cannot be found in the Declaration. As most important we are having on mind the “common history” in the Preamble and the “expert commission for historical and educational issues”. However, these two elements reflect the position of the two countries. The Agreement was concluded in a situation where Republic of Bulgaria was both, EU and NATO member with the power to veto any further enlargements of these two organizations in a situation where Republic of Macedonia was just a candidate willing to join. It is this kind of elements that Agreement has that allowed Bulgaria to institutionalize its privileged position in to the bilateral relations with Republic of Macedonia. Exactly due to the existence of certain asymmetric provisions, above all in the area of competencies and the overall way of functioning of the envisaged expert commission, we can conclude that there will be a need for some kind of annex or a completely new agreement, which confirms the hypothesis of this paper.

However, both documents have positive elements for the two signatory countries, which we have also acknowledged. As such, we would single out the mutual recognition of the existing borders and also the overall attempt to normalize relations by encouraging and developing economic, trade, and tourism ties between the two countries. However, unfortunately with the development of the later relations, as well as because the Agreement does not contain the clearest obligation to provide support for the membership of the Republic of Macedonia in the EU, we can predict that Bulgaria will condition its support with a new Agreement (or an annex to the existing Agreement) with even more asymmetric and more rigorous conditions for the Republic of Macedonia.

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