

The Long Way to Przhino: Reforms before Elections!

Introduction

The long-standing political and institutional crisis in Macedonia reached its peak in the course of 2015, with particular contribution of several key processes, those being: 1) disclosure of illegal wiretapped conversations that have been submitted to opposition SDSM and were disclosed in public by the party leadership in the period February - June 2015; 2) numerous protests and rallies organized around various causes that emerged prior to disclosure of wiretapped conversations (student protests, journalist protest, protests of precariat workers, etc.), but culminated in the aftermath of disclosure of certain wiretapped conversations (protests organized around the case of Martin Neskovski, various protest rallies, the Freedom Camp, etc.); 3) criminal charges against SDSM's leader on the grounds of having obtained and used illegally wiretapped conversations motioned by the judiciary and public prosecution, corrupted and controlled by the executive branch of government.

Institutional roadmap intended to resolve the political crisis was characterized by a series of expert and analysis papers developed by the international community, as well as specific political agreements reached among leaders of the four biggest political parties in the Republic of Macedonia.¹ The period following publication of the Senior Expert Group Report, i.e. Priebe Report, and Urgent Reform Priorities on 8th June 2015 marked an important phase in the negotiations for brokering a political agreement to put an end to the deep political crisis. These negotiations resulted in the Przhino Agreements signed on 2nd June, 19th June and 15th July 2015. Key purpose of the Przhino Agreement was to ensure legislative and institutional reforms necessary for organization of fair, free and democratic elections, which would enjoy the trust of all citizens and will mark the end of the deep political crisis in the state.² Przhino Agreement was endorsed by leaders of the biggest political parties in the Republic of Macedonia and its implementation is guaranteed by the European Union and USA, which insisted on consensual decision-making for all issues arising from this agreement.

Implementation of the Przhino Agreement and most important chapters from the Urgent Reform Priorities was pursued with difficulties on the grounds of numerous breaches to deadlines, primarily caused by obstructions to the process on the part of ruling parties. It was exactly this issue that underlined both letters addressed to the international community, endorsed by more than 75 civil society organizations.³ Immediately upon initiation of the election phase concerning implementation of the Przhino Agreement, a dispute emerged around the issue whether minimum

¹ Representatives from VMRO-DPMNE, SDSM, DUI and DPA participated in the political negotiations.

²http://eeas.europa.eu/delegations/the_former_yugoslav_republic_of_macedonia/press_corner/all_news/news/2015/2015-07-27_hahn_en.htm#

³ First letter is available at: <http://fosm.mk/mk/Home/NewsAndActivity?newsID=5056&catID=7>; Second letter is available at: <http://fosm.mk/mk/Home/NewsAndActivity?newsID=5060&catID=7>

conditions have been secured for organization of fair, democratic, free and credible elections scheduled for 24th April 2016. VMRO-DPMNE, DUI and DPA claim that such conditions are in place or could be created, while SDSM, referring to assessments made by the State Election Commission and other relevant factors, countered that the said conditions cannot be secured within the short deadlines, given the numerous delays in setting the legislative and institutional framework for organization of early parliamentary elections.

International facilitators, in particular EU Ambassador Aivo Orav and US Ambassador Jess Baily, made an attempt to establish a process that should resolve the dilemma whether commitments have been delivered to hold the elections, by addressing Prime Minister Emil Dimitriev and leaders of the four biggest political parties with a letter,⁴ sent on 28th January 2016. Therein they have committed to develop a precise assessment by 20th February 2016, concerning implementation of election-related reforms arising from the Przino Agreement and Urgent Reform Priorities, structured around three points, those being: 1) the election system – revision of the voters list, securing all resources necessary for unhindered operation of SEC (SEC to be staffed and funded); 2) the media rules – more detailed implementation of legal obligations under the Law on Audio and Audio-Visual Services (Article 61) concerning objective and unbiased media presentation of events with equal treatment of diverse views and opinions; 3) separation of the state and party in regard to operation of the public administration – clear measures to prevent party pressures on civil servants and sanctions for previous cases of pressures and intimidations.

In the wake of the publication of the assessment to be prepared by the EU Delegation and US Embassy on 20th February 2016, seven civil society organizations⁵ conducting regular and extraordinary monitoring analyses on several topics covered under the Przino Agreement have decided to develop a brief analysis of achievements and problems under each of the three areas identified in international community's letter. Presentation of analysis' findings is followed by a section on conclusions and recommendations addressing the crucial question: What needs to be done for Macedonia to hold fair, free and democratic elections? These seven civil society organizations have always advocated that answering this question is significantly more important than the technical issue related to the date for elections. Working on this analysis, the civil society organizations were guided by one primary goal: next parliamentary elections in Macedonia to ensure selection of legitimate institutions that would guarantee exit from this long-standing, deep political and institutional crisis and would open perspectives for democratization of the Macedonian society.

⁴ The letter, originally in English language, is available at: <https://t.co/oJzaP1QNmW>

⁵ Foundation Open Society – Macedonia (FOSM); Macedonian Centre for European Training (MCET); Helsinki Committee for Human Rights; NGO Info Centre; Foundation Metamorphosis; Transparency Macedonia, Institute for Human Rights (IHR).

Analysis

This analysis is organized in three sections corresponding to the three areas defined under the joint letter issued by Ambassadors Orav and Baily, addressed to PM Dimitriev and political parties, as follows: 1) electoral regulations (SEC and voters list); 2) media reforms; and 3) separation of the state and party. Referring to these three areas, the analysis offers arguments on fulfilment of criteria enlisted in the letter issued by Ambassadors Orav and Baily, thus serving as basis for the assessment to be published on 20th February 2016, which should determine whether conditions are secured to hold fair, democratic and credible elections on 24th April 2016.

I: ELECTIONS

Who will “measure” the voters list?

Implementation of key elements from the Przino Agreement concerning organization of the elections encountered serious delays: State Election Commission was established with a delay of four months; adoption of the new Electoral Code which, inter alia, awarded SEC strengthened competences, was adopted with a delay of month and a half; activities to update the voters list have not commenced. To present, the methodology on revising the voters list was adopted and activities are underway to collect electronic databases whose cross-checking should establish the scope of field checks needed for the list to be fully revised.

In their letter addressed to PM Emil Dimitriev, Ambassadors Baily and Orav referred to several developments they consider to be of key importance to ensure credible elections in the state.

1. State Election Commission must be fully staffed and funded;
2. Process on cross-checking of databases must be completed;
3. Clear and credible programme must be in place to clean the voters list, including a timeframe for completion of these activities, and resources must be secured for investigation and adjudication of all anomalies identified;
4. Clear legal framework must be in place for timely removal of names that do not belong on the voters list, as well as mechanisms for flagging names that cannot be removed from the list, but which require extra scrutiny;
5. Robust and fair mechanism must be in place for dealing with complains arising from the process on cleaning the voters list.

As regards item no.1, to present SEC does not dispose with necessary resources, although its budget has been approved and additionally strengthened by means of bilateral assistance intended to support this institution. Recent announcements stating that SEC capacity has been strengthened with 11 new employments⁶ are nothing short of manipulation, in particular because it is a matter of persons that have previously worked at SEC and whose employment status has

⁶ <http://vecer.mk/makedonija/site-vrabotuvanja-shto-kje-bidat-potrebni-vo-dik-kje-bidat-odobreni>

been transformed from temporary to permanent. Furthermore, in late January and early February SEC announced vacancy calls for two types of job positions and procurement call for services related to analysis of data from civil registries held by several state institutions. Deadlines for submission of job applications were 1st February and 17th February 2016, respectively. SEC is expected to employ 21 persons under time-defined work contracts (ending on 31st December 2016).

Said job positions were announced for the purpose of strengthening capacity at SEC's legal and IT department. Notably, 13 of the future employees need to hold bachelor degrees in law, while 8 of them should hold bachelor degrees in the field of information technologies. Additional requirement for both categories of potential employees is relevant working experience. Having in mind that one vacancy call is still on-going, job interviews for selection and recruitment have not started, and could be followed by complaint procedures motioned by unsuccessful candidates and encompass three instances in the decision-making process, as well as period of initial adjustment of new employees, serious doubts are raised whether these people will have sufficient time to complete their tasks and duties related to verification of the voters list and other preparations for early parliamentary elections scheduled to take place on 24th April 2016.

As regards item no.2, according to the official communication issued by the President of SEC and dated 17.1.2016, cleaning of the voters list pursuant to the new methodology, which was not adopted at that moment, would necessitate 85 days or almost three months. In order for the voters list to be thoroughly revised and made available for public insight on 5th March 2016, updating activities should have started on 10th December 2015, which is indicative of the fact that this procedure is already late by more than 60 days. On 2nd February 2016, SEC adopted the methodology on keeping and updating the voters list,⁷ as well as the methodology on full access to databases that would serve as basis for revising the voters list.⁸ Start of activities for cleaning the voters list was set one week later, i.e. 9th February 2016, notably by collection of databases held by ten public institutions that will be subjected to cross-checking and comparison. Activities concerning collection of databases encountered a delay due to the late submission of data held by the National Bank of the Republic of Macedonia.⁹ There is no official information whether cross-checking of databases has been initiated, but according to unofficial information these activities have started and initial results are expected later this week (15th – 19th February 2016).¹⁰

Assuming that comparison of database has started, completion of this exercise would imply that these activities result in clear identification and establishment of disputable data or differences in various databases. It is not clear whether establishment of differences would also necessitate adoption of separate decision or results from comparison and cross-checking procedures would

⁷ http://www.sec.mk/files/pravilnik_za_metodologija.pdf

⁸ http://www.sec.mk/files/pravilnik_celosen_pristap.pdf

⁹ <http://plusinfo.mk/vest/57291/dik-pocna-so-prezemanje-na-bazata-od-ujp-se-ceka-na-nbrm>

¹⁰ <http://emagazin.mk/vesti/vest/19150>

be considered sufficient. Nevertheless, having in mind past practices and applicable legislation, special decision will have to be taken by SEC concerning disputable data or maybe even amendments to the Electoral Code with a view to provide precise definition of the procedure for deleting names from the voters list (item no.4 on the list above). If members of SEC refrain from outvoting practices, this decision could be taken no later than the end of this week, i.e. 19th February 2016.

This decision and established differences among various databases would have to be followed up with the programme referred to under item no.3 on the list above, related to cleaning of the voters list, including a timeframe for completion of activities and necessary resources for investigating and adjudicating all anomalies identified. In order for the elections to be held on 24th April, the decision on announcing elections should be taken on 24th February 2016 which, on the other hand, would mean that cleaning of the voters list should be completed no later than 10th March 2016, i.e. 15 days after the decision on announcing elections is taken. In reality, this allows for a period of 20 days from the decision (19th February 2016) to the day when the voters list is made available for public insight.

Although 20 days are not considered a short period, in the absence of information about the scope of differences among various databases or the scope of disputable data, it is impossible to discuss the deadline for completion of activities related to revision of the voters list, moreover knowing that field checks will be needed in certain cases. In that, regardless of the manner and grounds on which people have been entered in the voters lists, deletion of their names would need to comply with particular administrative and procedural rules that entitle citizens to lodge complains against the decision for having their names deleted from the voters list (item no.5 on the list above). As regards deadlines, in particular the deadline for revision of the voters list, it is of utmost importance to establish a legal framework that would enable timely deletion of names that do not belong on the voters list, as well as mechanisms to flag names of people that cannot be deleted from the list, and will require extra scrutiny. Establishment of such legal framework would inevitably imply adoption of necessary laws and by-laws. Therefore, these legal acts would have to be adopted prior to dissolution of the Parliament, i.e. within the same period necessary for the programme referred under item no.3. If the Parliament is dissolved on 24th February 2016, any legislative interventions would not be possible, irrespective of the needs that would emerge after the scope of irregularities in the voters list is established.

Partisan judiciary as risk for credibility of the elections

In addition to SEC, key role in resolution of cases arising from possible election irregularities is played by the Administrative Court, acting as second instance decision-making body in these cases. Direct influence by the executive branch of government on the Administrative Court, which should reside in lawsuits motioned by citizens concerning violation of their right to vote, was clearly demonstrated during 2013 local elections, when the Administrative Court had taken

scandalous decisions for repeating the balloting process at high number of polling stations in the Municipalities of Centar and Struga.

Overview of statistics concerning approval of complaints motioned by political parties shows that, in the first election round, the Administrative Court reconsidered a total of 142 complaints motioned against decisions taken by SEC, 141 of which had been rejected as ungrounded, and one complaint motioned by VMRO-DPMNE and concerning the balloting process in the Municipality of Kicevo, had been approved. In the second election round, the Administrative Court reconsidered a total of 136 complaints against decisions taken by SEC, whereby it rejected 95 complaints and approved 41 complaints, 36 of which had been motioned by VMRO-DPMNE and concerned polling stations in Struga and Centar, as well as 5 complains motioned by SDSM concerning 4 polling stations in the City of Skopje and 1 polling station in the Municipality of Gjorce Petrov. On the account of such decisions and unprofessional conduct of judges residing in these cases, then current president of the Administrative Court, Husamedin Limani, resigned from office. Actually, judges residing in cases related to balloting irregularities in the Municipalities of Centar and Struga have been suspected of election frauds by the Special Public Prosecution, as part of first round of criminal charges raised by this institution in the case dubbed as “Titanic”.¹¹

The observed situation imposes the question whether relevant preparations of judicial authorities have been taken with a view to adequately deal with all challenges that might emerge in the election process. On the other hand, functional system for processing and adjudication of violations made to the Electoral Code and Criminal Code in relation to criminal acts against elections and voting is of key importance for successful organization of the elections.

II: MEDIA

How to ensure independent media in two months?

By the cut-off date for this analysis, political negotiations on media reforms have not moved from the so-called “impasse” and all deadlines have been breached. While on 11th February 2016, negotiation facilitator Peter van Haute declared¹² that political parties involved in negotiations have submitted amendments to the proposal put forward by the international community concerning changes to media legislation, no progress has been made in this regard and an agreement was not reached.

Absence of any concessions in terms of positions upheld by different political parties during several months of media negotiations shows that it would be unreasonable to expect essential changes to media legislation in the forthcoming period that would imply implementation of

¹¹ <http://novatv.mk/index.php?navig=8&cat=2&vest=27231>

¹² <http://24vesti.mk/vanhaute-site-partii-dostavija-amandmani-za-zakonot-za-mediumi>

recommendations enlisted under the Priebe Report and Urgent Reform Priorities for the Republic of Macedonia and, consequently, implementation of the Przino Agreement.

In the absence of agreement on media reforms, it is clear that Macedonia would not be able to ensure conditions any time soon for organization of free, fair and democratic elections.

If an agreement on media reforms is reached in the days ahead, it would take several months for such agreement to be enforced and produce tangible and measurable initial results that demonstrate essential change towards media freedoms. Adoption of legislative changes, re-organization of the Agency for Audio and Audio-Visual Media Services, as well as of the Public Broadcasting Service, would require time (several months, not days or weeks), if these changes are to be essential, not cosmetic.

Same is applicable in regard to balanced media coverage. Declarative signing of documents governing ethical, professional and unbiased media coverage, such as the recent endorsement of the Charter on Media Reporting¹³ drafted by the Council of Ethics in the Media, does not provide any guarantees that media outlets and journalists will truly respect ethical standards in their reporting. As an example, for years now the Journalists' Code of Conduct has been persistently and continuously violated. Most recent example thereof can be seen in the interview conducted by editor-in-chief at TV Sitel, Dragan Pavlovik – Latas, with the opposition leader Zoran Zaev.

Recent appearances in prime-time news programmes at pro-governmental television outlets with national concession, TV Sitel and TV Kanal 5, of the leader of SDMS and vice president of SDMS, Radmila Sekerinska, including the Minister of Interior Oliver Spasovski, who is also SDSM secretary general, cannot be treated as positive developments towards balanced media reporting according to numerous parameters and in particular due to the behaviour demonstrated by journalists/editors-in-chief in the course of said interviews, the underlying tone in these interviews imposed by said journalists/editors-in-chief, the presence of hate speech, labelling and disqualifications, etc. Actually, these interviews could be considered an exception that proves the “rule” of unprofessional and biased information for citizens on the part of media leaning towards ruling authorities, which has been duly noted for years back in relevant media monitoring reports for the Republic of Macedonia published by both, domestic and international organizations.

Given the above defined situation, it is quite clear that balanced media coverage cannot happen overnight and without essential changes to media regulations and their liberation from the pawns of governmental/ruling party influence.

III: SEPARATION OF THE STATE AND PARTY

Obligations established by Ambassadors Baily and Orav in regard to separation of the state and party indicated to the need for high state officials to issue written instructions and send a clear

¹³ <http://telma.com.mk/vesti/pogolemiot-broj-mediumi-potpishaa-povelba-za-etichko-izvestuvanje>

message to all employees at public institutions that pressures would not be tolerated and that support or lack thereof for any political party would not be decisive factor in terms of keeping their job position or social benefits. Moreover, the said letter underlines the importance of fast and thorough investigation and prosecution by competent institutions concerning all reports and complaints related to pressures or intimidation in public services.

As usual, ruling authorities have understood this commitment as merely a formal obligation and the single procedure taken to fulfil these obligations implied written instructions and public address by PM Emil Dimitriev to all holders of state and public offices, urging them to guarantee the right to vote for all citizens.¹⁴ In his address, PM Dimitriev called holders of public offices to be careful and not to allow their activities to be understood or interpreted as potential pressure or intimidation of voters. Such declarative and symbolic statement, void of specific steps implying investigation and sanctions for the vast number of past practices concerning abuse of state resources for political party goals (abundantly confirmed in wiretapped conversations released by the opposition), has no effect on meaningful separation of the state and party. This is further confirmed by the fact that former PM Nikola Gruevski engages in daily appearances, together with members of the Government of RM, and in capacity of president of VMRO-DPMNE, makes promises on behalf of the institutions and assumes responsibilities related to allocations under the state budget.¹⁵ Such behaviour on the part of the ruling party demonstrates control over state institutions and funds. These actions are in stark opposition to the concept on “separation of the state and party” as required in the ambassadors’ letter and are of key importance for holding fair, free, credible and democratic elections.

Conclusions and recommendations

Above presented information and findings undoubtedly provide the conclusion that conditions have not been secured for holding fair, free and democratic elections on 24th April 2016. Credibility of this conclusion is further strengthened when reconsidered against multitude of delays and obstructions affecting implementation of the Przino Agreement. In particular, they concern obstructions and pressures on the operation of the Special Public Prosecution on the part of the ruling party. Moreover, equally important is the fact that functional mechanism has not been established for parliamentary and judicial oversight on the Directorate for Security and Counter-Intelligence (UBK), indicating that the system for illegal mass interception of communications might still be used.

Under these circumstances, it is utterly ungrateful to insist on pre-defined dates for holding the early parliamentary elections, solely for the purpose of completing formal commitments assumed

¹⁴ <http://www.makdenes.org/archive/news/latest/428/428.html?id=27543618>

¹⁵ For example, several days after his resignation, Gruevski organized a meeting with government ministers and mayors from VMRO-DPMNE to coordinate a project financed by the state budget “Houses for Young People”: <http://kurir.mk/makedonija/vesti/koordinatsija-na-gruevski-so-ministrите-i-gradonachalnitsite-za-realizatsija-na-mega-proektot-kupi-kuka-za-mladi/>

under the Przino Agreement, thereby undermining serious delays and crucial problems that have not been resolved. In this regard, it is much more important to define a detailed list of obligations that should be completed prior to defining the final date for elections and their urgent organization. Implementation of these obligations will guarantee citizens' full trust in the election process, allowing them to concentrate on political programmes offered by competing political parties, freed of any fears that their vote will be manipulated or that they will be denied the right to political choice. Otherwise, insistence on the date for holding elections without clear timeframe governing fulfilment of conditions that should precede the elections would give rise to additional risks for potential boycott of the elections by vast portion of citizens, and would inevitably lead to further deterioration of the crisis in Macedonia.

In order to avoid any undesirable outcomes, we propose several specific recommendations:

- 1) SEC should be given sufficient time to pursue recruitment of the best candidates, thus ensuring actual and realistic capacity strengthening for its information technology and legal services. Moreover, new employees at SEC should benefit from adequate inception and job-orientation training in order to be able to perform their very important tasks and duties, as stipulated under the Electoral Code and Przino Agreement.
- 2) Realistic timeframe should be defined for thorough and substantial revision of the voters list. Shortening the period needed for revision of the voters list would instigate distrust among citizens in its credibility and would consequently lead to distrust in the election process as a whole, ultimately resulting in non-participation of citizens in the elections and contesting their credibility and legitimacy.
- 3) Actions are needed to adopt the legal framework for clear, precise and regular procedure on deleting names from the voters list that do not belong therein. Moreover, efficient mechanisms should be established for complaints lodged by people deleted from the voters list or in cases when persons that do not belong on the list have remained enlisted. Legal and institutional framework for establishment of this system will necessitate legislative changes that would not be possible after dissolution of the Parliament on 24th February 2016. At the same time, time is needed for these mechanisms to become functional.
- 4) An agreement must be urgently reached concerning rules that govern media work with a view to ensure objective media reporting and level playing field for all political actors in promoting their political programmes, as well as to encourage public political debate that is of great importance for citizens to make their political choice.
- 5) Urgent and specific measures need to be adopted for investigating and sanctioning previous violations to the Election Code or criminal acts made against elections and voting, as well as specific measures to separate the state and party and prevent existing pressures, intimidations and abuse of public resources for political party goals.
- 6) Effective judicial and parliamentary oversight mechanisms for UBK should be established and conditions need to be secured for unhindered operation of the Special

Public Prosecution, which plays a key role in implementation of the Przino Agreement and Urgent Reform Priorities, including restitution of citizens' distorted trust in institutions and their thorough de-partisation.

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