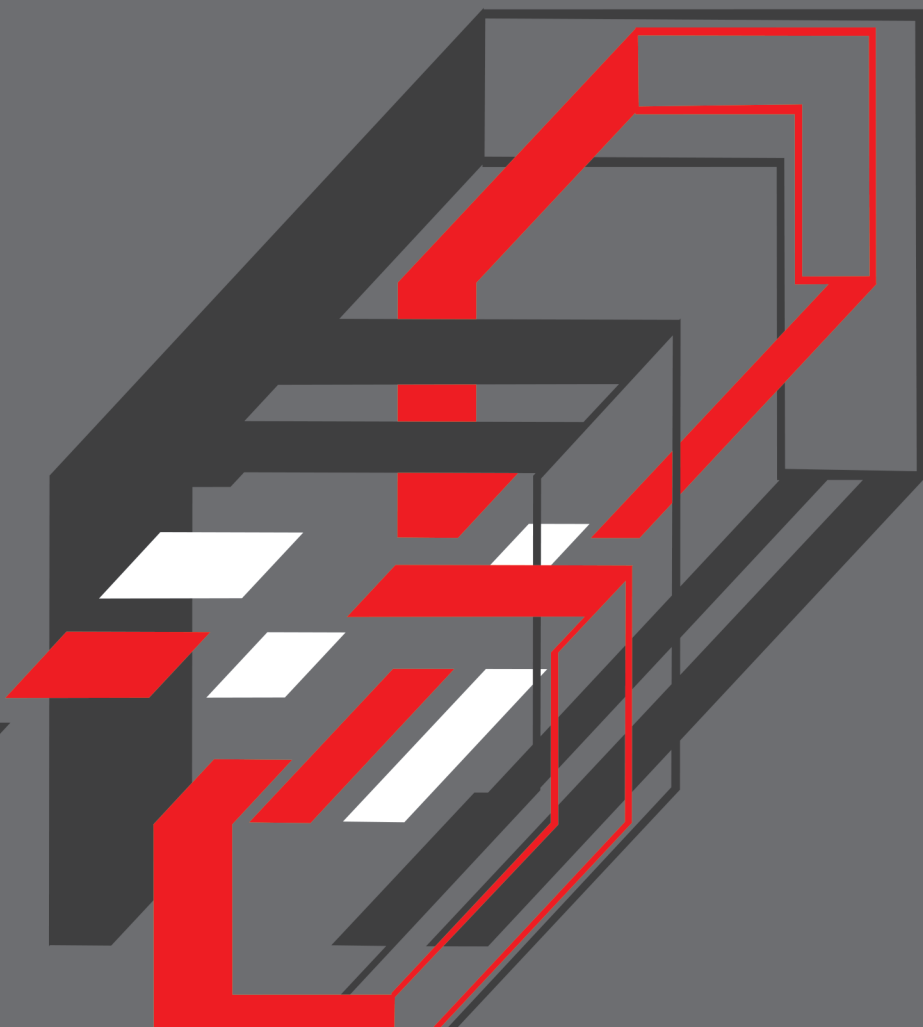




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## DELIBERATION

The Path of Dismantling  
the #StateCapture in Macedonia

Policy Reflections on Macedonia  
2016-2018





## **DELIBERATION**

### **The Path of Dismantling the #StateCapture in Macedonia**

*Policy Reflections on Macedonia 2016 - 2018*

Skopje, 2018

**DELIBERATION: THE PATH OF DISMANTLING THE  
#STATECAPTURE IN MACEDONIA.**

*Policy Reflections on Macedonia 2016 - 2018*

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*Position Paper*

A HOUSE READY TO CRUMBLE?

Putting Back the Building Blocks of  
Macedonia's Parliamentary Democracy

March, 2018

## EXECUTIVE SUMMARY

Prior to the “captured state,” a tag that Republic of Macedonia received amidst the prevalent non-democratic practices of Nikola Gruevski’s Government, the state was already *captured* by a tacit consensus between the country’s major political parties regarding the architecture of the political system. Namely, Republic of Macedonia has an electoral system that favours the big four (the two dominantly ethnic Macedonian parties plus the two ethnic Albanian parties), garnished with a variety of small ethnic-based and/or issue-based parties predestined to enter big pre-electoral coalitions, a proportional closed-list electoral model with six electoral districts, and an extremely strong allegiance of MPs to the parties’ headquarters.

The results of such a tacit consensus proved devastating for Macedonia’s parliamentary democracy, creating extremely strong political parties, weak MPs, and permanent parliamentary crises with quasi-regular parliamentary boycotts. The locus of power was to be moved away from the Parliament to the semi-official party leadership meetings, whereas the parliament itself has become subjected to the predominant control of the executive branch (the Government) over the parliamentary majority and virtually nonexistent endogenous debate at the Parliament’s plenary sessions or in the Committees.

Rather than tackling the day to day crises of the parliament’s functioning, we propose a debate on the structural predispositions for forging a consensual model that could sustainably resolve (and not only fix) the virtually permanent parliamentary blockade and bring the Parliament at the forefront of the democratic deliberation and promote it as an efficient check of the executive branch.



This position paper gives several hints on the possible sustainable solutions, provided they are tackled simultaneously. These solutions consist of strengthening and enhancing political parties' internal democratic procedures (which are difficult to tackle, and yet there are some positive, promising prospects announced both by VMRO-DPMNE and SDSM), slight but substantial change of the country's electoral system (we propose a proportional closed-list representation with one electoral district and no threshold for the entry into the parliament, a model that was announced by the now ruling SDSM party), and strengthening MPs' individual capacity for deliberation by increasing the oversight role of the Parliament and a greater citizens' role (civil society organizations and individuals) in co-devising public policies with the Parliament.

Naturally, past experience teaches us that we should be extremely cautious about the realistic prospects of such major developments regarding the country's political structure and its electoral model. Nevertheless, the current parliamentary deadlock (and the future ones to come on the horizon) give merit to the thesis that it is better to open a thorough debate sooner than later, rather than just to perpetually fix the small holes in the house ready to crumble.

## INTRODUCTION

**I**t is March 2018. Republic of Macedonia, less than a year from the April 27<sup>th</sup> dramatic events in the Parliament, is slowly limping towards democracy. Stakes are really still high, and the structure of the democratic system that is trying to (re)establish itself at this point is still shaky at best. However, every downfall invites hopes as the society – or, for that matter, every society – is prone to the superstitious belief that every crisis must have a purpose and something new and better should arise from it. Sadly, that is not always the truth.

Surely, there was no consensus in the past about the very foundations of the Macedonian parliamentary democracy. On the contrary, there seems to have existed a tacit consensus between the major political actors (until a year ago these were the two dominant ethnic Macedonian parties plus the two dominant ethnic Albanian parties) of favoring the systemic barriers that discouraged other political actors' entrance in the political field. This tacit consensus was mirrored in the electoral system, further nurtured by the non-official "leaders' meetings" (a tradition that found its climax in the Pržino negotiations), and by a no-friendly-fire approach regarding the financing of the political parties and the intra-party democratic procedures.

If there was no consensus in the past, we might attempt to fashion certain contours of a possible, albeit involuntary, consent between the political parties about some basic aspects of the democratic system: pluralism, debate, competition of ideas, and, in short, the understanding that one must debate and confront one's opponent through argumentation.

Some of the reasons behind this reluctant optimism lie elsewhere. Namely, the country is currently experiencing a rather low political legitimacy of parties' leaders although for different reasons. This is

the case for Zoran Zaev, Hristijan Mickovski and Ali Ahmeti. A public that is overwhelmed with high expectations from the political process and is radically disillusioned in the same time (however contradictory this might seem) faces an increased interest for the country's perspectives by the so-called international community (a community now "enlarged" by the Russian vested interest in the region). There is no other means to tackle the complexities thus presented but by way of systemically strengthening the role of the Parliament and the role of the MPs.

All in all, it is a matter of the context the Macedonian citizens are currently living in. In our opinion, the context seems to be favorable in pushing the major political parties toward acceptance that their excessive powers that result into a virtually omnipotent executive branch need to be reduced for the benefit of another type of a social and political contract with the citizens.

If done correctly and in a concerted fashion, the following proposals should improve the Macedonian damaged democratic tissue:

- bringing back the Parliament as the cornerstone of democratic deliberation and a means of functional checking of the executive branch;
- inducing cross-party and cross-citizens appeal for more intra-party democracy in the major political parties;
- introducing slight changes in the electoral system with the aim to unchain the toxic pre-electoral coalitions, thereby enabling the small issue-based and/or minority-based political entities to enter in the political arena;
- empowering MPs vis-à-vis the executive branch, including the strengthening of Parliament's oversight function and bringing citizens and civil or-

ganizations to effectively co-devise public policies.

The current ruling party has openly made most of these pledges during the 2016 election campaign. Many citizens carefully listened and cast their votes. The current (and every other) opposition should be happy with the prospects of the once given promises by SDSM for electoral system changes becoming a fact and should push for such changes with its own bit of ideas contributing to such goal.

- **The predominant role of the Government.** Albeit constituted as a parliamentary democracy, the political history of the Republic of Macedonia shows an overwhelmingly predominant role of the Government in devising and shaping the political and legislative environment. The country, in its relatively short democratic experience, failed to make the Parliament a cornerstone of the democratic processes. On the contrary, one could say that over the course of the years, the Parliament (i.e., parliamentary majority) saw its function gradually diminished and becoming almost completely subservient to the political will of the Government. The apex of the persistent parliamentary crisis came on December 24, 2012, when all opposition MPs, on the occasion of the adoption of the annual budget, were brutally removed from the parliamentary session by an intervention of the secret police and the special police forces. This context could presuppose a sort of illiberal democracy with weak checks and balances. The President of the Republic, although elected by direct vote, is destitute of real powers and is perceived as a side-lined figure in Macedonian politics.

The predominant role of the Government is tightly related to the relations between business and politics. Namely, when most of the power is concentrated in the hands of the Government (and the

Prime Minister), the potential entry points for one to engage into politics could be directly related and dependant on the decisions made by the PM and a small group of executives (highly ranked party officials at the same time) or invariably around the chief of the biggest opposition party, who is nominally the aspirant to become the next PM.

As in many post-communist countries, the transition period and the process of privatization have witnessed the emergence of business oligarchs who were able to control a large portion of the financial flows in the country, thus securing a privileged position in the distribution of business and political influence. These businessmen-oligarchs were crucial in giving or not giving their support to the political elites. Basically, whenever there was a change of the political elites in the Government, the largest companies were almost by default side-lining with the (new) Government, thus creating a sort of "incestuous" link between the ruling political parties and the business.

Since 2006, when VMRO-DPMNE took the power, the country has witnessed a nearly total encroachment of the Government upon the business sector, thereby making the Government and the pro-Government businessmen the biggest employers in the country and the ones who control virtually every segment of the economy.

Another indicator is the financial condition of the political parties in opposition. Namely, on the one hand, the bigger opposition parties struggle with finances and donation because most of the donors/businessmen are reluctant or afraid to donate funds due to fear from Government retaliation. On the other hand, smaller parties have a stark choice: either to side with the ruling coalition or to perish from the political scene.

- **Political parties' internal procedures.** The above mentioned type of perverted political system is again tightly connected to the types and practices of political parties in the country. Macedonian political parties show strong autocratic tendencies, in which the leader and the highest ranked party clique firmly control the circulation of party elites. The party system is extremely fragmented. As of 2008, there were 83 registered political parties.<sup>1</sup> Most of these political parties have never been represented in the Parliament, and many of them were established as offsprings of bigger political parties. A study conducted in 2007 on the level of internal party democracy (IPD) of political parties in the region of South Eastern Europe demonstrates that the internal party procedures, the loyalty of the party members (i.e., clientelism) and the nexus business-political party are the most resilient elements that prevent parties to liberalize the barriers to entry into politics or the emergence of other relevant political actors.

The index shown below calculates a sum of six individual components on the basis of which a scale from 6 to 18 can be constructed, where the higher level indicates a higher degree of IPD.<sup>2</sup>

**1. Rights of party members.** The score indices given for this component have the following meaning: 1 = party members are excluded for opinions different from the party official positions; 2 = right to free expression of opinions; which are not subject to any sanctioning whatsoever; 3 = the functioning of party fractions is officially permitted.

<sup>1</sup> The exact number of political parties is not certain, since many of the parties struggle to gather the required 1000 signatures for re-registration and the official register of political parties does not always accurately state the number.

<sup>2</sup> See Gordan Georgiev, "Political Parties in Macedonia: Democracy or Efficiency Dilemma," in *Reshaping the Broken Image of the Political Parties in SEE: Democracy in South Eastern Europe* (Sofia: GorexPress, 2007), 154-173.

**2. Nominations of candidates for public offices.**

This component aims at establishing the level of control that a party exercises over this process. The indices assigned along the scale from 1 to 3 depend on the party authority, which nominates and determines the candidates for members of Parliament in principle: 1 = by the national party leadership; 2 = by a regional party forum; 3 = at primaries conducted by the political leadership of the party.

**3. Way of electing the party leader.** 1 = by the political leadership; 2 = at the representative party forum; 3 = at primaries held by the political leadership.

**4. Autonomy of the local party bodies.** 1 = the local leadership is nominated by the national party leadership; 2 = the local party bodies have limited political and organizational autonomy; 3 = the local party bodies have a substantial degree of political and organizational autonomy.

**5. Opportunity for the party members to take part in the formation of the party policy.** 1 = the party policy is formulated by the central leadership and the higher party elite (1 = the lowest degree of participation); 2 = the policy of the party is subject to broad discussions in all party structures; 3 = the policy of the party is shaped from the bottom up (3 = the highest degree of participation).

**6. Horizontal structures, which assist the functioning of the party and its activities.** 1 = lack of autonomous horizontal structures; 2 = autonomous horizontal structures exist only superficially and they have no significant impact on the party activities; 3 = the horizontal structures play a large role in the activities of the party and help shape its policy.

IPD parameters	VMRO-DPMNE	SDSM	BDI/DUI	DPA	NSDP	VMRO-NP
Party members' rights	1	2	2	2	3	2
Nomination of candidates for public offices	1	2 <sup>3</sup>	1	1	2	1
Way of electing the party leader	2	2	1	1	2	1
Autonomy of the local party structures	1	3	2	2	2	1
Formation of the party policy	1	2	2	2	2	1
Role of horizontal structures	2	2	2	2	2	1
<b><u>Total result</u></b>	8	13	10	10	13	7

The results show that the process of selecting party and Government officials is highly centralized and lower party structures (regional, local, youth and women) have little influence over the process. The feature that is not shown in the table is the non-negligible role of big business interest in influencing the political parties' policies and decisions.<sup>3</sup>

- **Electoral models and cost of politics.** The electoral model in Macedonia indirectly strengthened the tendencies of monopolization of the political process by the four biggest political

<sup>3</sup> Candidates are nominated by the local organizations and confirmed by the Congress, consisted of representatives of various level of party organization.



parties in the country. After couple of electoral "experiments" throughout the 1990s, the country's electoral model seems to be stabilised into a pure proportional model, with six districts and no threshold. Apart from its political imperatives (better representation of the minorities, better access into politics for small ethnic-based and/or issue-based parties), the proportional electoral system brought somewhat unexpected consequences. Additionally, the electoral model Macedonia employs is also deeply related to the previous description of the political system.

Electoral systems are sets of rules that specify the types of votes that citizens may cast and how those votes are translated into seats for the chosen legislative candidates. The main consequences of the electoral systems can be divided into two types: interparty and intraparty. The interparty consequences of the electoral systems include the proportionality of election results and the degree to which elections promote bipartism or fragmentation in the party system. Since the stability of the legislative majorities and the ability of electorates to hold legislative majorities accountable for their performance tend to be inversely related to the fragmentation in the legislature, these interparty consequences entail a trade off, with legislative representativeness set against stable and accountable majorities. Generally, it is assumed that the majority electoral model (first-past-the-post) produces a bipartisan political system (the UK model is the most notable example) while the proportional model induces more fragmented system in which small parties relatively easily get parliamentary seats.

Therefore, it might be surprising that the Macedonian case deviates from the common understanding of the fragmentation of the party system. The persistence of bipartisan politics throughout the years and through different electoral models, guides us to search for the origins of this "deviation" elsewhere. The somewhat peculiar six-districts pure proportional model (devised to satisfy ethnic minorities' demands) on the one hand simulates a quasi-majority model (indirectly raising the threshold for elected MPs) and, on the other hand, it still puts the predominance of the party elite in making the electoral lists (as in a typical proportional system). This system actually helped the preservation of the bipartisan politics and constituted a barrier for smaller parties to act independently and present their own lists. Moreover, small parties are now forced to join big coalitions and bargain with the big parties if they want to make it to the Parliament. To put it in the words of an MP and a leader of a small political party:

*"Small issue-based parties have no chance to get any MPs under this electoral model. The big four made a conscious deal to prevent any other party to claim parliamentary seats unless they join the pre-electoral coalitions. And joining such a coalition entails big sacrifices for us, either in programmatic or financial terms."*<sup>4</sup>

It is therefore not a surprise that the few past "third way" initiatives, besides their initial success, turn out to be a complete failure. Finally, a telling example is the fact that few politicians/businessmen became owners of national TV stations (SITEL, KANAL 5), thus raising their *price* in the political market and taking

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<sup>4</sup> The MP wanted to remain anonymous.

part in virtually every ruling coalition. By these political transfers, these politicians/businessmen got MP seats and big parties got the influence over their TV stations. This clearly represents a source of corruption practices. A member of Transparency International Macedonia puts this in a succinct way:

*"Owners of big private TV stations understood that, through their political activities, they can have the mercy of the governing officials, and even get richer through large government advertising activities. Ruling parties know perfectly well that these businessmen's political parties do not contribute with votes at all, but the gain from their TVs' political influence is enormous. It's a perfect trade off for both sides."*<sup>5</sup>

By contrast, the intraparty consequences of the electoral systems involve the degree to which rules foster intra-party electoral competition (in general elections) and/or help lead candidates devote more energy to developing ties with their electorates instead of their party leadership (or vice versa). Roughly put, these consequences originate from the importance of parties or candidates in a voter's decision of how to vote. In party-promoting systems, voters are empowered to select between (but not within) lists of candidates fielded by parties. Here, the voting decision has little to do with the individual candidates who make up the party lists and much more to do with the differences between party platforms. A telling indicator of this is the pervasiveness of the actual lists (with candidates' names): they seldom appear on voters' ballots and they are not widely advertised or circulated before the election. In contrast, in the more "candidate-centered" systems, voters

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<sup>5</sup> Interview with Mr. Sašo Ordanoski, political analyst and member of Transparency International Macedonia.

are not only empowered to select among individual candidates, but they can often select among candidates of the same political party. This, of course, makes the voting decision much more dependent on the reputations, accomplishments, and personalities of the individual candidates.

One of the intraparty consequences to merge from this party-versus-candidate distinction is party cohesiveness: more candidate-centeredness means less party cohesiveness, and also a diminishment in the utility of party labels and the ability of voters to hold parties collectively accountable. Further afield, the distinction affects policy-making and the nature of the activities that legislators will pursue in order to seek re-election. For example, candidate-centeredness motivates particularistic and pork-laden policies because these allow legislators to claim credit for local goods. As a result, we may see more particularism and fewer public goods the more the electoral system promotes candidate-centred elections. Macedonian political elite across the political spectrum consensually chose to adopt the party-centred model, giving the parties' leaders and parties' headquarters a decisive role in creating the electoral lists and leaving little space for intra-party democracy.

*"People in small towns and villages do not care who is the candidate, what are his/her accomplishments, moral or ideological virtues. They only care what is the party label behind the candidate, since people's local connections and expectations (obtaining a job, better position in the local administration or local business improvement) are directly related to which party will be the overall winner, and not which candidate will get parliamentary seat."*<sup>6</sup>

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<sup>6</sup> Interview with a local political commentator (anonymous).

- **Deviation of the “no threshold” rule.** In Macedonia, a clear pattern could be established in the sense of circumventing the benefits of the proportional system (large coalitions, more small parties, ideological diversification, etc.) by forging big pre-electoral coalitions in which small parties have little say and little prospect of voicing out their concerns. The result is that smaller parties rarely leave the coalition and almost regularly abide to the decisions of the senior political party.

Another feature of the Macedonian electoral model is the negligible importance of the no-threshold rule. It is expected that no-threshold systems encourage small parties to go alone in the elections. In fact, assuming the six-district model, the “real” threshold in Macedonian elections is around 7000-8000 votes per district in order for a candidate to become MP. For example, in the 2011 parliamentary elections, VMRO-NP (a small right-wing party) got 30.000 votes countrywide but they did not get any MPs since the votes were spread all over the country and not concentrated in one or two districts. Had it been a pure proportional, no-threshold, one-district model, VMRO-NP would have gotten at least 3-4 MPs. This system discourages small parties to run individually for elections, and instead it encourages them to be in a coalition where they have one or two seats guaranteed.

The establishment of the current proportional model was a political decision to soothe the demands of the ethnic Albanians community and it is commonly used in consensual democracies. The political rationale behind the proportional model is that the MPs are accountable to the whole (or large part of) the electorate and not only to their constituencies. Proportional systems

should therefore maximize the *political inclusiveness* of the system, which may be a stabilizing factor, in that it will keep diverse sets of actors satisfied by offering them a fair chance to compete. And although its deficiencies are quite obvious, it is unlikely that this model will change in near future.

All the same, the evidence from Macedonia suggests that cohesive ethnic parties (i.e., ethnic Albanian parties) are able to mobilize support through either electoral mechanism. There is a logical reason for this: in as much as their support is geographically concentrated, they ought to be able to win approximately the proportion of single-member seats in Parliament as is their share of the population. For them, the majority system functions in much the same way as the proportional system, so long as they are not affected on the list vote by high threshold requirements. In Macedonia the minorities make up a large enough share of the population that this does not constitute a problem.









*Policy Brief*

THE PARLIAMENT OF THE REPUBLIC OF MACEDONIA  
AND THE REFORMS IN THE SECURITY SECTOR:  
A Voting Machinery or a Genuine Forum of  
Delibearation?

December, 2017

The reforms in the security sector (with a special emphasis on the Bureau of Security and Counter-intelligence - UBK) is the first priority in the recommendations of the Group of High Experts on Systematic Issues Regarding the Rule of Law (further referred to as the Reinhardt Priebe Report). In a way, this reform is considered as a *conditio sine qua non* for the realization of any further systemic reform in the country.

On the other hand, the complexity and the obscurity of regulating this matter does not leave much space to the public - even the expert one - to be able to discern in a qualified manner the inclusiveness and the purposefulness of the reforms in the security sector. To a certain extent, the aforementioned is understandable, having in mind that the very topic is delicate and affects aspects of the political system which by definition are or should be regulated with a certain extent of discretion.

Within a sea of information and the high number of proposed law changes (as high as five law amendments or new laws related to the area of communication surveillance), the public cannot really discern the degree to which these changes/reforms will bring forth an actual realization of the recommendations given in the Priebe Report. Additionally, an impression has been created that the Government's 3-6-9 plan insufficiently or with insufficient precision "transforms" Priebe's recommendations into actual reforms. Compared to the two reports by Priebe (2015 and 2017) abounding with highly accurate qualifications and proposals on the resolution of the current state of affairs, the Government's 3-6-9 plan appears to be more of a political bulletin that abstractly points to the assumed reforms and priorities, while its indeterminacy justifiably gives the public the right to pose and open further questions and dilemmas.

This brief has the general goal of clarifying to the public the potential weaknesses and “voids” in the proposed reform in the security sector, as well as to warn against potential imprecisions that in the future may create precedents and possible political interference in this area.

Also, this brief (and the on-coming ones) has a specific objective to help the members of the Assembly of the Republic of Macedonia (both from the ruling majority and the opposition) to be able to, in a relatively competent manner, deliberate and essentially contribute to the development of the state of affairs in the Republic of Macedonia. The reform of the security sector is a responsibility of not only the Government but of the legislative branch of the Republic of Macedonia as well, and it nonetheless needs be of benefit to all the citizens of the Republic of Macedonia and to the opposition (current or any future one) in the narrowest sense.

#### **WHAT ARE THE SO CALLED “NEURALGIC NODES” THAT THE CIVIL SECTOR AND THE MEMBERS OF THE ASSEMBLY OF THE REPUBLIC OF MACEDONIA SHOULD PAY SPECIAL ATTENTION TO?**

1. The changes in the Law on Communications (and the accompanying four laws that are part of this corpus) are but a part of the all-inclusive reform in the security sector, or a beginning of the process of separation of the party from the state. These changes in the law, which needs a qualified vote of two-thirds majority, represent a kind of test given by the European Commission to ascertain whether the Government, but first and foremost the Parliament, shows any signs of reform capacity. The remaining, essential part, is a more thorough reform of the security sector that will lastingly and thoroughly create preconditions in preventing abuse of the se-

curity service for political and party ends.

During the whole process, the European Commission continuously insists on inclusiveness in the process, i.e., substantial inclusion of the opposition in the passing of the laws throughout the process, and a consensus in some segments (particularly where two-third majority is necessary to pass the law). This necessity of inclusion is not only aimed at establishing a dialogue between the MPs in the Parliament and/or potentially ease the process of passing laws, but it also has a long-term goal: namely, to position the Parliament and its MPs as a main locus of discussion, deliberation and essential inclusion in the process of passing and changing laws. Without such critical emancipation of the Assembly of the Republic of Macedonia from the executive power, the parliamentary democracy cannot thrive.

2. Out of the four models suggested, the Government has chosen the one relying on a so-called intermediary body, that is, an Agency that will act as mediator in the process of intercepting communications. This Operative-technical Agency (OTA) will be established *ex novo* by the Government and its director will be elected in the Parliament with a simple majority vote and a mandate of five years.

Yet, it is worth noting that according to Priebe's Report (p. 12), it seems that this solution is the least desirable by the Senior Expert Group led by Reinhard Priebe since this model is not impervious to potential political influence in the interception of communications. The most desirable model for Priebe is the one in which the proprietary

switches and the right to mirror upon court order belong directly to the telecommunication operators and not, as according to the model suggested by the Government, through a new body of the executive branch (an agency). Priebe's remarks in this context point to the fact that even the new body, considering the political culture in the country may be subject to political influence, thus OTA becoming the old-new UBK. What gives extra strength to this remark is the manner in which the director of OTA is elected (by a simple parliamentary majority contrary to the unofficially announced two-thirds majority) and the relatively short mandate (five years instead of the unofficially announced seven or nine years).

3. The two Priebe Reports, the Urgent Reform Priorities set by the European Commission and all the public statements by the high representatives of the international community postulate the Parliament as key institution in a democratic system that needs to take its role of a lawmaker and a forum of deliberation through which in a substantive debate all reform-related issues need to be processed. In this sense, it seems that the Assembly of the Republic of Macedonia does not own the role that naturally and constitutionally belongs to it in a democratic system of governance. For instance, the proposal on the establishing of the new body, the Operative-technical Agency (OTA), is a solution imposed by the Government and a solution that has not previously been discussed in the Parliament, along with the other three proposed solutions stated in Priebe's second Report. This is gravely problematic given that the Priebe report expresses concerns regarding the com-

plete independence from political influence in the new state body - OTA.

4. Due to the previous negative experiences with the (non)separation of the party from the state, the Government, in accordance to Priebe's recommendation, proposes a set of measures and solutions for an enhanced oversight by the Parliament and the expert public regarding the reforms in the security system. Oversight is a very important aspect in the whole process and it is being insisted upon in order to fill all potential law "holes" that could be abused by the Government (the current one or any future government).

The law on communications suggests several types of oversight:

- Parliamentary oversight, that is, a parliamentary committee consisting of five members whose president and majority come from the opposition. The committee has an increased mandate in the new legal solutions as well as the right to invite external collaborators (filed experts) that will facilitate the oversight.
- Council of civil control. It is a new body that should be elected by the Parliament consisting of experts and representatives of the civil sector.
- Overseeing the operators. OTA will be in charge of overseeing the operators in the process of executing the measures undertaken for communication surveillance. (Note: this aspect is potentially troublesome as it leaves space for OTA, i.e., the Government, to exert pressure on the operators).


- The Directorate for Security of Classified Information will oversee the handling of classified information.
- The Directorate for the Protection of Personal Data oversees the lawfulness of the actions undertaken towards the processing of personal data.
- The ombudsman executes overseeing from the aspect of respecting human rights and liberties.

If this relatively complicated scheme of overseeing and "tied signatures" does its work in an efficient and law-abiding manner, we can expect a relatively coherent oversight mechanism of the communication surveillance in the future.

Nonetheless, the Assembly of the Republic of Macedonia, through its committees in which the majority comes from the opposition, must be the first and the key barrier to any potential future non-democratic behavior by the Government.







*Short Policy Essay*

THE SPECIFICITY OF THE MACEDONIAN  
EXAMPLE OF "STATE CAPTURE":

Ruminations Following the Second Priebe Report

September, 2017

The system of a captured state, specific for the Macedonian version of "illiberal democracy," is that of the *executive branch subordinating or "holding in captivity" the legislative branch and the judiciary*. We, the researchers of ISSHS, have demonstrated and analyzed this phenomenon in several of our previous publications (such as "Technology of State Capture," 2015). The center of our previous studies has been the analysis of the core techniques (or policies) that enable and sustain the form of state capture at issue. According to our findings, the subjugation of the Parliament is of key importance for rendering as *de facto* absolute the power of the executive branch. This means that the system allows normalized legal abuse of power in the form of "blurring of party and state" by way of introducing laws that permit such actions. The abuse of state institutions by the ruling parties takes place in the form of "their partization." This in turn means that being cadre of the ruling party or being in line with its ideology and rhetoric is required for one to prosper - not only in the public administration but in the private sector as well. Such processes are never explicitly divulged in the laws but they are still enabled in a perfectly legal way. The ruse of legal overregulation combined with occasional legal contradiction is used to camouflage many problematic practices that entail or come down to the blurring of state and party. According to our previous research referring to the former rule of VMRO-DPMNE and DUI, the laws proposed by the Government are adopted by the Parliament majority without a single exception. It remains to be seen if the methods and the system of policies that enable this specific type of "state capture" will be abandoned and replaced with properly democratic ones by the new Government.

It is a common knowledge in Macedonia that the Parliament is the voting machine of the government. But what is most worrying is that most of the informed public does not find this problematic. Thus, it goes without

saying that whatever the executive branch proposes must be accepted and approved by the Parliament. One can only infer, as the Second Report of the Senior Experts' Group [SEG] has, that:

This has been described as a type of "state capture" but is perhaps more precisely characterized as the capture of the judiciary and prosecution by the executive power. (Second SEG Report, p. 5)

Therefore not only the legislative branch but also the judiciary is subjugated by the executive branch. *The key instrument for capturing all institutions of the state, the economy and, finally, the society of Macedonia in an "illiberal democracy" is the subjugation and complete instrumentalization of the Parliament.* In such way 1) a country can nominally endorse the EU Acquis and, by way of certain legal adaptations and "contextualizations," 2) to augment the legislation with such details that make possible the absolute control of the executive branch. According to our previous comparative research this is the manner in which an illiberal democracy, such as Hungary, can still pass technically the criteria for its continued EU membership, and by the same token Turkey can still pass as a democracy, although it is apparently anything but that.

But what is at stake in the pursuit of an ever more dominant and increasingly absolutist status of the executive branch? The answer is: partocracy - the equivalence of party and state. Business and party interests are inextricable, whereas the institutions are instruments for the legal realization of the goals of the party-business hybrid. However, the intertwining of party, business and state in an illiberal democracy is different from the one which took place in the period of "transition." There is a legal system which permits such blending and rule of law to be generally observed, but the legislation itself is problematic in the sense explained above. Moreover, the motivation is not merely financial gain - it is also ideological one.

The ideology behind such blending offers a vision of a society of "law and order" vouched for by a strong leader. This is what underpins the blurring of state and party and enables the party control of business and economy. In a way, these countries have never really transitioned to a pluralist democracy, but found a way to formally parade as one while they substantially act as a single party state system. Such is the case of Macedonia.

For all of the above stated reasons, it is important to decapture the state from the control of the ruling party - whichever it may be. In order to do so, what is urgently needed is the reversal of roles of Parliament and executive branch. MPs and the institution of the Parliament should be empowered. This can happen through introducing specific policies that will lead to a more pluralistic parliament, such as:

- 1) Changing the electoral model (with the intention of making it easier for the smaller parties to win seats in the Parliament).
- 2) Introducing greater intra-party democracy.
- 3) Devising policy instruments that will enable overcoming of the asymmetry between the executive and the legislative branch (and the judiciary). (This will lead to effective dismantling of the existing system of state capture, not expecting reborn sense of integrity among the MPs and the judges.)

"Cleaning" the system from those with the "wrong" party affiliation, as the experts led by Reinhard Priebe note in their second Report, will not bring about the desired changes but rather do the opposite:

Mistakes of the past should not be repeated and one form of state capture must not be replaced by another. (Second SEG Report, p. 3)

Unless the new government understands the urgency of change in attitude in the fashion thus described, the 3-6-9 Plan will remain a list of empty declarative statements.






LOOKING BACK ON THE PHENOMENON OF THE  
#StateCapture







*Policy Brief*

THE FIRST AND INDISPENSABLE STEP TOWARD  
DISMANTLING THE LEVIATHAN OF THE  
STATE-CAPTURE

- *A Look Back and a Glance Forward at the Occasion  
of the First Anniversary of the Special  
Public Prosecutor Office: The Urgency of the UBK  
Related Reforms*

October, 2016

The Special Public Prosecutor Office (SPP Office) presented its Annual Report at a Parliament session held on September 26, 2016 marking the one year anniversary of its establishment. The Report is available to the public through the SPP Office's website.<sup>1</sup> We engaged in a close reading of the Report and could identify the following main features of its functioning in the past year:

- In spite of the relative cooperation of the other institutions with the SPP's Office, there is flagrant lack of it too in the form of either 1) not responding to requests to hand in documentation related to cases that SPP has authority over, 2) not responding as requested by way of flooding the SPPO with materials that are evidently not linked with cases related to its juridical authority, a process that has significantly slowed down the pace of work for the Special Prosecutor. Considering that absence of competence to understand the requests must be ruled out, we are compelled to conclude that these instances are in fact intended obstructions of the process. The central case related to the wiretapping revelations, namely "Putsch," opened by the Public Prosecutor in May 2015, after more than a year of delays was handed over to the SPP on June 30, 2016.
- In spite of the short period of time amounting to a mere one year since its establishment, the SPP has managed to demonstrate remarkable efficiency by opening 60 preliminary investigations,

<sup>1</sup> The Special Public Prosecutors Office [Јавно обвинителство за гонење кривични дела поврзани и кои произлегуваат од незаконското следење на комуникациите], *Report on the activities of the Special Public Prosecutor for the six months period of 15.09.2015 to 15.03.2016 and Report on the activities of the Special Public Prosecutor for the six months period of 15.03.2016 to 15.09.2016* [Извештај за активностите на Јавното обвинителство за гонење на кривичните дела поврзани и кои произлегуваат од содржината на незаконското следење на комуникациите за период од шест месеци (за периодот од 15.09.2015 до 15.03.2016) и Извештај за активностите на Јавното обвинителство за гонење на кривичните дела поврзани и кои произлегуваат од содржината на незаконското следење на комуникациите за период од шест месеци (за периодот од 15.03.2015 до 15.09.2016)], available at [www.jonsk.mk](http://www.jonsk.mk), accessed on October 15, 2016.

out of which 38 preliminary investigations on publicly leaked recordings and 22 preliminary investigations regarding unpublished recordings. The Special Public Prosecutor indicted 40 persons involved in four (4) cases that have been subject to its investigations in the past year. Two subsequent indictment proposals were filed with the Trial Court Skopje 1 on September 15, 2016, the date of the release of the second Report by the SPP.

We could say that a certain minimum issuing from the Urgent Reform Priorities<sup>2</sup> related to the task of moving away from autocratic tendencies and state capture has been met through the functioning of SPP Office. Nonetheless, the work accomplished by the SPP is about mere implementation of the principle of rule of law related to the wiretapping scandal and cannot be considered part of the reform process in the strict sense, albeit acting as its precondition. The urgent reforms proposed in the Report of the Senior Experts' Group (dubbed The Priebe Report)<sup>3</sup> concern undertaking systemic changes enabling future democratic and non-corruptive functioning of the state.

The first recommended step toward substantial democratization of the system according to the Senior Experts' Group Report (SEGR) is related to reforms aimed at limiting the virtually unchecked power of UBK. The recommended reforms, we argue, require certain legislative interventions:

- “Divesting of UBK of its intermediary function” (SEGR, 7) which enables it to act on its own behalf and on behalf of the Police, Customs Administration and Financial Police, granting it

<sup>2</sup> European Commission: Neighborhood and Enlargement Negotiations, *Urgent Reform Priorities for the Former Yugoslav Republic of Macedonia* (June 2015), available at [http://ec.europa.eu/enlargement/news\\_corner/news/news-files/20150619\\_urgent\\_reform\\_priorities.pdf](http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_urgent_reform_priorities.pdf), accessed on October 20, 2016.

<sup>3</sup> *The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015* (Brussels, 8 June 2015), available at [http://ec.europa.eu/enlargement/news\\_corner/news/news-files/20150619\\_recommendations\\_of\\_the\\_senior\\_experts\\_group.pdf](http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf), accessed on October 20, 2016.

"monopoly over the use of surveillance" (SEGR, 5) is something that requires change in legislation and, thus, an initiative of the Parliament involving all major political parties.

- "UBK has the means to interfere in criminal investigation" (SEGR, 5) and thus undermine the "leader of investigation, i.e., the prosecutor" and, through that, the rule of law by way of affecting the independence of the Judiciary; thus, it is imperative that a reform in the legislation is undertaken as the breach of power by UBK is currently legally permitted or not explicitly and unequivocally prohibited.
- Functioning parliamentary oversight over UBK also requires legislating intervention that will address the problem of "conflict of interest" (SEGR,7) present in the current form of oversight as prescribed by the law permitting UBK to issue or not clearances to members of the Parliamentary Oversight Committee.
- In order to divest UBK from access to arbitrary, i.e., not contingent upon a court order, mirroring of the communication signal and to, therefore, move "proprietary switches," as required by the Senior Experts' Group, to the "premises of the telecommunication providers," legislative interventions are required too so that UBK has no "practical capability to capture communications directly." (SEGR, 8)

Apart from policy changes and concrete action in the institutional practice, legislative interventions are required in order to ensure the basic principles of a democratic and European state are observed in the functioning of the UBK. The excessive power of the UBK and its interference in the work of "the leader of investigation" (SEGR, 5) undermines the country's compliance with the Copenhagen criteria by way of com-

promising the independence of the judiciary (i.e., the prosecution). For these purposes, a minimum consensus along different party lines in the Parliament is indispensable as the precondition for reform processes in terms of legislation revision.

The legislation contradicts itself among a number of articles in two related laws or, at least, displays vagueness which permits arbitrariness in the actions of UBK. Namely, articles 9 and 10 of the Law on Interception of Communication require a valid court order for a definite period of time for an interception process to be initiated.<sup>4</sup> However, the Law on Electronic Communication<sup>5</sup> enables unrestricted access of UBK to constant mirroring and direct capturing of signal intimates practical total absence of oversight which can invite arbitrariness in action on the part of UBK. The articles 175 and 176 of the Law on Electronic Communication, as noted in the Senior Experts' Group Report, allow that "the three national telecommunications providers to equip the UBK with the necessary technical apparatus, enabling it to mirror directly their entire operational centres. As a consequence, from a practical point of view, the UBK can intercept communications directly, autonomously and unimpeded, regardless of whether a court order has or has not been issued in accordance with the Law on Interception of Communications." (SEGR, 6) Thus, the Senior Experts' Group urges Republic of Macedonia to divest UBK from its power to directly intercept communications and requires that "proprietary switches" are "moved to the premises of the telecommunication providers." Legal interception should be enabled only by way of diverting signal to the competent law enforcement agencies by the telecommunication providers upon the receipt of a valid court order. This implies that intervention in legis-

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<sup>4</sup> "Amendment to the Law on Interception of Communication" [Закон за изменување и дополнување на законот за следење на комуникации], *Official Gazette of the Republic of Macedonia* 116 (2012) [Сл. Весник на Р. Македонија, 116 (2012)].

<sup>5</sup> "Law on Electronic Communication" [Закон за електронските комуникации], *Official Gazette of the Republic of Macedonia* 39 (2014) [Сл. Весник на Р. Македонија 39 (2014)].

lation is required, namely addressing issues raised by the Senior Experts' Group, in particular with regard to the articles 175 and 176 of the Law on Electronic Communication. Or in the words of the Senior Experts' Group:

The UBK should have no direct access to the technical equipment allowing mirroring of the communication signal. *The proprietary switches should be moved to the premises of the telecommunication providers.* The providers should activate and divert signals to the competent law enforcement agencies (Police, Customs Administration and Financial Police) or the security agencies (the Security and Counterintelligence Service [UBK], the Intelligence Agency, and the Ministry of Defence's military security and intelligence service) only upon receipt of the relevant court order, and only for the purposes of lawful interceptions. Under no circumstances should the UBK have the practical capability to capture communications directly. (SEGR, 8)

Undertaking action in addressing the UBK related recommendations in the Senior Experts' Group Report is the first and necessary step to guarantee commitment by all parties-signatories of the June/July Agreement of 2015 (or the so-called Pržino Agreement) to engage in effective reforms aiming at dismantling the system that enables state capture. Adopting changes in legislation to ensure such a commitment will be the material proof of will of the parties to do something more than merely maintain or establish change in power after the early elections in December 2016.

In conclusion, we recommend:

1. Change in legislation in reference to articles 175 and 176 of the Law on Electronic Communication that will enable for the proprietary switches to be moved back to the telecommunica-

tions providers and for UBK to be divested of the technical capability to directly capture signal, as proposed in the *Senior Experts' Group Report*.

2. Revision of the legal provisions concerning parliamentary oversight of the UBK that will circumvent the issue of conflict of interest which is permitted by the vagueness and contradicting stipulations of the current legislation (as noted in the Senior Experts' Group Report).
3. Legislative interventions to be carried out by the Parliament should be coupled by bylaws to be adopted by the law enforcement agencies endorsing policies of transparency and rule of law.





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