

POLICY BRIEF

 Recovering the Legitimacy of the State
Institutions After the Political Crisis

Dr. Artan Sadiku and Dr. Katerina Kolozova

INTRODUCTION

The state capture in Macedonia has been ongoing for years. Under the guise of EU integration oriented reforms, since 2011 mechanisms of legalizing pretension toward absolute rule of the executive branch have been established in Macedonia. Along with Hungary and other post-communist countries, Macedonia has been at the forefront of the rising “illiberal democracies” in Europe. The legally overly regulated areas of education, media and entrepreneurship have enabled perfectly legal academic and editorial censorship and a crony economy. The matter has been analyzed and presented in a series of **research papers** of ISSH-Skopje, and the simple claim that can be drawn is the following: the excessive regulation operates as the main gear of attributing virtually absolute power to the government. This pretension toward absoluteness of control by the executive branch results into undercutting the very possibility of effective autonomy of academia, media and of the area of small and medium domestic investment enterprises. Let us note that we do not argue either here nor in our previous studies for deregulation but rather for regulation which does not replace the secondary legal acts (e.g., bylaws) and does not establish party control via the legislation and the executive branch. The fact that the laws are detailed in ways in which bylaws, rulebooks and the various guidelines of companies, universities and media outlets would usually be detailed, speaks of authoritarian tendencies. The fact that these laws contain a number of administrative fines unprecedented anywhere in Europe enables the executive branch to circumvent the judiciary and establish unchecked control in all areas.

What enables the adoption of this type of laws is the Parliament that has been captured by the party-business elites. The current Parliament is a voting machine in the most literal sense of the word. Hence, in order to put the executive branch under effective control, in order to make it accountable and to solve the grave problem of its legally unchecked power, we argue, the local political elites, the civil society and the international guarantors of the June/July agreement (Pržino) should aim to empower the Parliament

and restore its status among the three branches. Until the beginning of the so-called “political crisis,” the technique of legalizing restrictive policies and repression, has affected negatively many aspects of freedom and democracy. It has also served as the means of selective justice and business favoritism, while its bureaucratic complexity has functioned as the perfect smoke-screen for corrupt policies and abuse of power (not necessarily for financial gains but very often for the sheer power itself).

The current crisis has involved the main pillars of the democratic political system of the country in actions that stretch beyond their constitutional powers and have consequently caused a disruption within the overall stability of the institutions of the state. A series of legally ambiguous decisions adopted by the Parliament, the Constitutional Court and the President have provoked deeper institutional uncertainty. Further ad hoc decisions have been made by the Parliament in the attempt to institutionally accommodate the politically volatile situation.

 THE POLITICAL CRISIS, FLOURISHING OF
POPULISM AND THE CRISIS OF THE INSTITUTIONS

The Macedonian political crisis that escalated in 2015 has now also become crisis of institutional legitimacy. The acts of political parties during the following period have affected all three branches - judiciary, executive and legislative, in a series of ambiguous legal actions which have resulted in consequential breaches of constitutional principles and legitimacy of the institutions of the state. All of the actions presented below represent cases of grave political abuse of the institutions for the purposes of political gains amidst a political crisis.

On 16th of March 2016, the Constitutional Court abolished several articles of the Law on Pardoning of 2009 effectively allowing the President of the country to pardon people involved in electoral fraud. The decision was contested by experts as one which is adding inconsistency to the law, which currently neither forbids nor expressly grants the right to the President to pardon cases related to electoral fraud. Following this change in the Law on pardoning, the President took a decision to pardon all politicians currently under investigations or serving their sentence and non-politicians who are most probably potential witnesses in the cases opened or announced to be open by the Special Public Prosecutor. The president explained and attempted to justify his decision as a gesture aiming to release the tensions among political actors. The content of the decision was

also legally ambiguous since it covered a list of 56 persons on various grounds which makes the pardoning breach of the right to presumption of innocence and does not engage into a process of careful elaboration on individual basis. The decisions of the Constitutional Court and the President of the country caused overwhelming disagreement throughout the entire social and political spectrum followed by protests under the hashtag #protestiram and #шаренареволюција. The civil society, consisting of organizations, grass-root movements, individual citizens and activists of some opposition parties (SDSM and Levica predominantly), has been protesting in the streets for two months now. The requests they have put forward call out the institutions. They have demanded a solution to the crisis from the state institutions and, thus, seem to have a higher sense of urgency to restore the legitimacy of the institutions of the state. On the other hand, the political parties have persistently instrumentalized or ignored their role.

The Parliament, acting in response to the processes that followed the 2015 June-July Agreement, dissolved itself in order to open the way to the organizing of early elections. The first vote of 18th of January 2016 was revised with the one of 23rd of February 2015 in order to accommodate the disagreements among political parties that appeared in the interim period. After the decision on early elections became effective on April the 7th, the Parliament reconvened anew based on a decision issued by the Constitutional Court on the cessation of all electoral processes. The decision to reconvene entered into legal gray area, since the article 63 of the Constitution of Macedonia allows for reconvening of a dissolved Parliament only upon a declaration of a state of emergency or war. This case clearly shows how the Parliament has been pushed to act in legal gray area, on demand of the party leaderships participating in the Pržino related negotiations.

The irresponsible actions of the entrenched political elites have bended the meaning of “the institutional” to the extent of rendering it meaningless. This process of extension of extralegal actions of the most important state institutions, under the pressure to accommodate the needs of the political games, has further delegitimized the institutions.

The recourse to the vocabularies and imaginations of “revolution,” “freedom,” “national salvation,” “dictatorship,” “historic moment,” obfuscates the evident and pressing need to focus on building of a very specific action plan

to implement the Urgent Reform Priorities (Priebe’s report). The ‘elevation’ of the political rhetoric to grand narratives also puts the institutions in a position of lower relevance, implying they should be used arbitrarily in the name of a “greater cause.” Their legal framework and constitutional powers are increasingly taken as merely technical.

The frequent recourse to the method of appealing to the ‘people’ to decide the fate of Macedonia by both the ruling parties and the opposition is a rhetoric that displays the key cause of the perpetuation of the crisis – barring the very possibility of an institutional solution. The rhetoric that replaces institutions by introducing the vague notion of the “people” and some assumed spontaneity of enacting “people’s will” is a symptom of dangerous deepening of populist rhetoric. Thus, the authoritarianism of the VMRO-DUI rule camouflaged in the seeming EU technocracy (or “illiberal democracy”) has now been coupled with revolutionary populism of the opposition. If the institutions of the state are required to carry out reforms based on Priebe’s report, it is now more than ever pressing needed to insist on discussions on policies and institutional reforms rather than populist slogans and vague moral and political values.

Legalism obfuscating authoritarianism is certainly not the rhetoric that can solve the crisis. After all, it is what brought Macedonia into this crisis in the first place. Revolutionary talk expressing open distrust in the institutional struggles does not provide the grounds for setting up a Priebe oriented reform agenda either.

RECOMMENDATIONS

- To the political parties:

In order to restore the legitimacy of the institutions, all parties involved in the June/July Agreement must engage into drafting and adopting an action plan for the implementation of the Urgent Priority Reforms (UPR) according to Priebe’s report. As the UPR relate quite simply to an overall goal of strengthening the democratic capacities of the institutions, the plan should set clear and measurable indicators of outputs and milestones in order to be able to carry out the core of Priebe’s recommendations. The format of this joint reform oriented undertaking by the political elites can be determined by the parties that are signatories of the Pržino agreement. It is, however, our claim that a unity government would be the most adequate format for such task.

- To the civil society

1. The focus of the civil society's demands put forward to the institutions should be on the Parliament because it represents the highest form of power that should dominate over and control the executive and the juridical one. If empowered, the Parliament of true democratic pluralism will be able to undercut any pretension of the executive branch to rule in almost absolute terms.

2. The demands and policy proposals of the civil society forwarded to the Parliament and related to an adoption of an action plan to implement the Urgent Priority Reforms, should also include electoral reforms that empower the Parliament. These should take into consideration the following: a) establishing of a single electoral unit for the country and open lists in order to enable smaller party's participation and MPs independence, b) reforms in the law on political parties to increase intra-party democracy, and, finally, c) enabling the political (not ethnic) minority to enact control over publicly unpopular votes of the Parliament by organizing a referendum according to clearly defined terms and requirements.

- To the international community

The international community has been involved in the negotiations process related to the implementation of the June/July (Pržino) agreement as one of its signatories. The EU representatives should strongly insist on the implementation of the Urgent Reform Priorities through a specific action plan as presented in the above recommendations. Let us note, once again, that such reforms will not be possible unless the Parliament is empowered for which we propose measures in the recommendations stated above.

