

URGENT REFORMS TAKING THEIR TIME IN THE REPUBLIC OF MACEDONIA

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Abstract

Since 2001, the Republic of Macedonia had gone through several waves of international and national actions, which resulted in requests of the international community, primarily by the European Union, for systemic reform processes. The first wave came with the Ohrid Agreement, which brought armed ethnic-based conflict to an end. The second one emerged due to the usual association and accession commitments of a candidate state since 2005 and implementation of the Road Map for Visa Liberalisation between February 2008 and July 2009. The third wave came out of a severe political crisis in 2015, which had revealed a series of systemic and democratic deficiencies – from illegal interception of communications and political pressure against the judiciary, to violations of media freedoms and principles of fair elections. In June 2015, a Senior Expert's Group summarised a set of recommendations for the European Commissions in a document titled: *Urgent Reform Priorities for the Former Yugoslav Republic of Macedonia*. This paper analyzes Macedonian slow path of reforms, affected by deficient inter-ethnic confidence, political tensions, decentralisation, administrative and political culture in the Macedonia and shortcomings within the of the rule of law.

Keywords: *Macedonia; Reforms; European Union; Rule of Law; Democratisation*

Introduction

At the time of declaration of independence, the country was economically weak and still had to establish state structures and ensure rule of law. In 1990, very few citizens of Macedonia actually believed that their republic would be able to survive the separation from Yugoslavia, due to its, at the time, systemic deficiencies but also due to the fact that Macedonian Albanians did not appear to be overly enthusiastic to live in an independent state mainly ruled by Macedonians, i.e. Macedonian Slavs (Richard, 2003, p. 404; Cowan and Brown, 2000, pp. 1-28; Philips, 2004, pp. 48-79).

As in other states that originated from the imploded state, Macedonia suffered from collapse of social and political cohesion, very deficient

rule of law which had directly resulted in a significant increase of criminal activities, economic system unfit for liberal market conditions, corruption and violence. Sixty-eight per cent of voters voted in favour of independence in the referendum held on 17 September 1991 (Alice, 2000, p. 142). Already in December, the European Community stated it was ready to recognise all former Yugoslav republic as independent states, under condition that they comply with political, territorial and human rights. The first blast came from the southern neighbour. Claiming that the constitutional name of the Republic of Macedonia belongs to Greek exclusive cultural heritage, it had made a series of blockages for the new born state, which, among other, resulted in withdrawal of the statement of the European Communities vital for further processes related to proper state building and development of international relations (Shea, 1997, pp. 278-311). Interim Agreement of 7 April 1993 which enabled international recognition of Macedonia as the Former Yugoslav Republic of Macedonia was to be an agreement of temporary nature. More than two decades of unsuccessful negotiations strongly indicate that no compromise is good enough for neither of the two parties involved in the name dispute. After the independence of Macedonia, except the aggravated relations with Greece, the relations of Macedonia with neighbor countries like Bulgaria and Serbia faced different challenges. The consideration of Macedonian language as a dialect of the Bulgarian language, the thesis of the Bulgarian scientists on the history and on the origin of the Macedonians and the project of 2014 of Shkup, are simply some of the components that have challenged the relations of these two neighbor countries. On the other side, the lack of the recognition of the Serbian Church about the Macedonian Church has always affected the bilateral political relations among Serbia and Macedonia (Ibid., p. 327).

The early 1990s in the new state were marked with serious lack of inter-ethnic confidence, often resulting in riots and increasing demands for increased participation of Macedonian Albanians in the state structures and insisting on a possibility for education in Albanian language, which escalated in the case of first attempt of opening the Tetovo university¹ in part of the country mainly populated by Albanians in 1994 (Bumci, 2001, p. 34-36). The state structures, at the time dominated by Macedonian

1) The University of Tetovo was formalized in January 2004, by bringing in the Law from the Parliament of the Republic of Macedonia for the foundation of the State University of Tetovo, due to the rights gained by the Agreement of Ohrid.

Slavs, suppressed the attempt. Albanians had also insisted on being allowed to use their ethnic symbols such as the flag and coat-of-arms in official communication and on personal documents. This fragile and poor state in its early days of independence also had to deal with waves of refugees from Bosnia and Herzegovina in 1992 and from Kosovo in 1999. Spring of 2001 brought along tensions not only on the border with Kosovo², but also between two main ethnic groups in the western part of the state, significantly populated by Albanians. The conflict ended after an extensive international intervention led by EU's representatives Xavier Solana and Lord Robertson, and US envoys Francois Leotard and James Pardew. They mediated brokering of the Ohrid Peace Agreement³, which has been envisaging introduction of Albanian language into official use and into the system of education, increase of number of Albanians in the public services and administrative decentralisation (Philips, 2004, p. 188).

With its agreement with the European Communities of January 1998, Macedonia officially commenced its formal interaction with EU structures related to Macedonian integration in to this sui generis. Soon after, the Parliament got two new committees for integration into the EU and NATO. The Parliament also adopted a strategy for EU integration. Already in February 1998, Macedonia had initiated a political dialogue with the United Kingdom Presidency of the European Union (Azizi, 2016, 144-147).

According to Philips (2004) back then in 1998, some speculated that Macedonian Slavs needed an incident, similar to the one just prior to a Summit of Balkans prime ministers on 22 and 23 February, to shift the focus away from the scandal with illegal interception of telephone calls, which was organised by the Macedonian nationalists, famously known also as Internal Macedonian Revolutionary Organisation-Democratic Party for Macedonian National Unity (VMRO-DPMNE).

In 2001 Macedonian GDP dropped by eighteen per cent and as a result the international financial institutions got involved in management of public finances in order to soften immensely negative economic effects in the country (ibid., p. 185). Same year, the World

2) In February 2001, a conflict broke out in the village of Tanuševci near the border, after Belgrade agreed with Skopje that this village of some 400 people, mainly Albanians, should be a part of Macedonia on basis of the bilateral border agreement. This agreement will remain a source of tensions between leaders of Macedonian Albanians and Slav dominated Macedonian authorities throughout 2003 as well.

3) Text of the Ohrid Peace Agreement available on: http://www.coe.int/t/e/legal_affairs/legal_co-operation/police_and_internal_security/OHRID%20Agreement%2013august2001.asp viewed on 15 September 2016

Bank, the European Union and some forty individual donor states had committed to provide Macedonia with the total of 241 million USD for general economic development and additional 247 million USD for financing the reconstruction. The Government had expected 77 million USD less (World Bank). There was a general fear that the tensions could transform into the last war for pieces of former Yugoslavia which could be the most dangerous one, with strong spillover potential and serious regional implications.

The Rule of Law and the International Commitments

Along with its usual responsibilities and commitments that originated from both association and accession processes, the European Commission tasked in June 2015 the country to urgently fix serious systemic shortcomings in the field of the rule of law and judiciary, public administration and media freedom. It is of utmost significance to focus on the rule of law part of the set of urgent reforms and the context within which the need for this has developed.

Macedonia has been an EU member state candidate since December 2005 and due to political instabilities, it is a living proof that the candidate status does not mean much if a country decides that European integration does not constantly remain the top priority of the state, regardless of immediate challenges, elections, sharp political and ethnic-based divisions and unpopular reforms that need to be made and very often. The Stabilisation and Association Agreement between the EU and Macedonia entered into force in April 2004. The Commission first recommended opening of accession negotiations with the country in 2009 to the European Council (*ibid.*, p. 115).

The Ohrid Peace Agreement continues to be the main element for democracy and the rule of law. It has in one hand, provided disarmament of Albanian rebels and in the other provided education in Albanian language⁴ and improved representation of Albanians, Roma and Turks in the civil service and law enforcement agencies. Macedonia has had very good cooperation with the International Crimes Tribunal in the Hague, which was a stumbling block for progress of many countries of former Yugoslavia on the European path. In order to cover suspects that

4) The formalization of the State University of Tetovo (2004) and the opening of the state university of Nënë Tereza in Shkup (2016) are tangible results of the Ohrid Agreement in the sphere of the education and schooling advancing of the Albanians of Macedonia.

have not been processed by the Tribunal, the Parliament adopted an authentic interpretation of the Law on Amnesty in July 2011.

The Republic of Macedonia had adopted Council Decision (2011) to support to the International Criminal Court, but the country has never withdrawn from the bilateral agreement with the United States of America of 2003, that exempts citizens of this country from the Court's jurisdiction. As this is not in accordance with the common positions of the EU on integrity of the Statute from Rome, this country needs to harmonise its bilateral relations with this position of the European Union (Progress Report for FYRoM of 2015, p. 22).

In 2010, Macedonia had been chairing the Committee of Ministers of the Council for six months with focus on three priorities: Strengthening of human rights, integration and respecting diversities and promotion of youth participation (Council of Europe's Press Release). To a large extent, this was a reflection of challenges that Macedonia has been facing internally for years now and spilling over these priorities to the inter-state arena had proven to be also good for the general political climate in the country. A number of events and actions on these topics took place in the country between May and November 2010 which discussed the need for improvement of position of vulnerable groups of people, affirmation of dialogue on the Ohrid Agreement among the youth, integration of people with disabilities, religious dimension of the multicultural dialogue, etc.

Due to its increasing political instability, the European Union signed a Protocol⁵ with the main political stakeholders in the country on 2 June 2015⁶, putting the opposing forces in a coalition in the executive, and demanding extraordinary elections to be held. These parliamentary elections were to be held on 24 April 2016, then 5 June 2016. According to the decision reached on 31 August 2016 by Macedonian ruling political parties, the elections are to take place on 11 December 2016.

5) So-called Przino Agreement. This agreement was signed by the four leaders of the largest political parties in the Republic of Macedonia: Nikola Gruevski, Zoran Zaev, Ali Ahmeti and Menduh Thaci.

6) Text of the Protocol: https://ec.europa.eu/commission/2014-2019/hahn/announcements/agreement-skopje-overcome-political-crisis_en viewed on 20 September 2016.

Reforms for Stabilisation and Reaffirmation of the European Integration

The country previously treated some systemic anomalies that periodically reoccur. The opposing Social Democrats of Macedonia, SDSM revealed in 9 February 2015 a new illegal interception affair and a number of omissions within the system of rule of law and law enforcement. The European Commission marked the period of 2014 and 2015 as the country's worst political crisis since 2001 (Progress Report for 2015 of the European Commission). Following intervention of the European Commissioner responsible for enlargement and neighbourhood policy and representatives of the European Parliament⁷ in June and July, SDSM MPs rejoined the Macedonian Parliament after almost a year long boycott. The EU's involvement resulted with a conditionality set called „Urgent Reform Priorities“, as developed by a group of senior EU experts (Urgent Reform Priorities Report, p. 2). Also, inter-ethnic tensions were particularly high in spring 2015, following a police intervention in part of Kumanovo populated by Macedonian Albanians, when 18 lives were lost. Among other, content of intercepted communication had revealed strong political involvement in appointments in both the judicial system and public service.

The Senior Experts' group was led by Reinhard Priebe, a Commission official who got recently retired after having spent a significant part of his service as a political director of the European Commission for the western Balkans. The experts consulted many: relevant representatives of all three pillars - the legislative, the executive and the judicial, non-governmental organisations, lawyers, journalists and international organisations. The group identified five groups of shortcomings in the Republic of Macedonia: interception of communications, judiciary and prosecution services, external oversight by independent bodies, free elections and media freedoms (Urgent Reform Priorities report, p. 2). While the experts generally complimented quality of the legislation relevant for these areas, it has also pointed out that there is a lack of proper, objective and unbiased implementation and called for urgent changes. The Ombudsman, the State Election Commission, Directorate for Personal Data Protection, as well as other regulators and civil society organisations have been identified as the key institutions for ensuring urgent, open and transparent implementation of the recommendations. In addition, the experts insist that there should be a better oversight

7) MEPs involved were Ivo Vajgl, Richard Howitt and Eduard Kukan

over intelligence services and a truly independent judiciary. Because nature of these reforms was urgent, the experts did not see the need for setting deadlines for individual interventions and reforms.

Luan (2014) explained that when it comes to judiciary, the experts demanded true depoliticizing of appointment and promotion of judges and prosecutors, a harmonised system for measuring performance in both qualitative and quantitative terms, inappropriate elements for introduction of disciplinary measures and dismissal of judges, more precise parameters for appointment of members to the Judicial Council, consistent encouragement of pro-active role of the Judicial Council. The experts also insisted on improvement of capacity building of employees in the judicial and the rule of law segment and transparency of decisions reached within the system. Deadlocks and lengthy proceedings resulting with so called “old cases”. The country’s commitment to execution of all ECtHR judgments has also been highlighted.

Concerning the prevention of further cases of illegal interception of communications, the experts recommended establishment of a functioning judicial and parliamentary oversight of interception of communications. They also strongly recommended limiting mandate and competences of the Security and Counterintelligence Agency and clarification of roles of different stakeholders in the process – from the telecommunication operators and police to security and defence agencies.

According to independent monitors of implementation of the reforms, the depolarization in appointment of judges and prosecutors still did not take place and neither is the system for performance monitoring. The requirement for mending the provisions related to disciplinary measures against judges and their dismissal is also not being implemented by the Macedonian authorities. Criteria for appointments to the Judicial Council are still not improved. Capacity building and the remarks related to improvement of judicial pro-activeness are still just starting to evolve through professional and public debates. Series of actions have been undertaken on making the judicial decisions and deadlines for their implementation public and transparent, but the recommendation still needs to be completed fully.

On 12 January 2016, the Judicial Council has adopted an Action Plan for resolution of pending or so-called “old cases” and has just begun with implementation of the document. In addition, efforts on moving more quickly on execution of ECtHR judgments are increasing but are still insufficient when it comes to individual cases. It is both indicative and

worrying that only one recommendation has partially been implemented when it comes to oversight of the illegal interception of communications – functioning of a parliamentary committee responsible for oversight over the interception and work of intelligence agencies. Unfortunately, the committee sometimes does not meet for months.

Although Macedonia has a well done legal framework for independent regulators, the experts concluded this legislation is not being complied with. They called for lifting of political pressure from the regulatory and supervisory bodies, but also pro-activeness of stakeholders in the regulatory segment to react timely and appropriately to act effectively and freely. Macedonia also needs to align legislation on office of the ombudsperson with the Paris principles⁸ and to make sure that the recommendations of this body are being complied with. Until fall 2016, none of these recommendations have been fulfilled.

Macedonian authorities are still to make efforts on establishment of a credible track record on high-level corruption that would involve engagement of police agencies and supervisory bodies and to improve its system for improvement of scrutiny for conflict of interest and establishment of a central registry of officials in conflict of interest. In cooperation with the Council of Europe's Group of States against Corruption - GRECO, in November 2015, the Government of Macedonia asked the Venice Commission to provide an opinion on draft law on whistle-blowers, but the law has not been adopted yet.

When it comes to strong recommendations for revision of the Law on Lustration and its implementation, recommendations of the experts related to temporal limits, safeguards against different external influences applied on articulation of reasons used as ground for lustration, nothing have not been to have this improved. However, the problematic law has been put out of force on 1 September 2015.

Concluding Remarks

The constitutional, legal and law enforcement system of the Republic of Macedonia have constantly been challenged and compromised. Having in mind its unique geopolitical position, integration of this country into the European Union has been imposing itself as a condition for continuation of its existence. The independent state of Macedonia has

8) The Paris principles available on: <http://www.oikeusiamies.fi/Resource.phx/ea/english/hrc/principles.htx>, viewed on 19 September 2016

been overwhelmed with problems of social and economic transition and numerous problems that came out of its neighbouring states or simply spilled over into the country. Ethnic centrism between both Albanians and Slavs in Macedonia have been making the whole situation even more complex. Also, fierce and radical political division of left and right wing Slavs often surface and create plenty of tensions and mutual accusations.

Greece, a member of the EU and NATO, has converted its bilateral dispute over Macedonia's constitutional name into a multilateral issue and obstacle for recognition of Macedonia as a state in international structures in which adoption of decision by consensus is rather important. Long term strategy of both EU and NATO is enlargement to the entire western Balkans and this has been accepted by Macedonia and incorporated into its strategic priorities. However, although a member of both structures, Greece has been limiting final effects of the integrations and stabilisation in the region as it has been conditioning resolution of the name dispute in its favour, without any concessions. This has been contributing to euroscepticism in the country, which inevitably in this country leads to ethno-centrism and political tensions. If the scenario of full integration of this country into the EU and NATO does not continue with positive trends, this could only bring into the picture alternative scenarios of domination of some of regional powers with their individual interests. These alternative scenarios do not have the potential to provide peace, stability and prosperity in the Balkans.

In Macedonia the time has shown that only moderate, coherent and precise related to implementation of conditionalities necessary for European and NATO integrations could bring positive trends to Macedonia and most of the Balkans. In the other hand, it has to be noted that reactive nature of international interventionism in Macedonia often questions coherency of politics of countries that aspire to join the European Union. The issues, such as the name dispute and inconsistent monitoring of implementation of effects of reforms significantly reduce positive effects of the stabilisation and association process throughout the region. Limited with mandates and budgets, international demands were often to fit realities and nature of their limited interventions, rather than doing something with both short-term immediately effects, but also systemic requirements that have long-term nature.

The Urgent Reforms, including the segment of the rule of laws and judiciary, that are being recommended by European Union group of experts do not seem to be taken as something that should be implemented

in Macedonia with strong sense of urgency. The reforms recommended are basically to bring the country back on the track of European integration and it also brings along the element of public responsibility and security. The element related to the rule of law and judiciary is one of the most crucial elements of the Criteria from Copenhagen – particularly political criteria and requirements related to the rule of law. Politization of the judicial system makes it unprofessional, fragile and open for political corruption and both economic and political instability.

After fourteen months of implementation of this set of reforms, the independent monitors did not mark any of the recommendations as completed. Although one could say that the methodology of the experts which includes absence of deadlines due to urgency of all measures is nothing but common sense, to a large extent it can be concluded that this approach did not prove itself very productive one as the process has appeared to be slow and inert instead of the contrary.⁹

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9)As a result of the Agreement in Perzhino, a Special Prosecution is established with the aim of investigating the eventual crimes committed by the officials of the Macedonian state. Recently EU has suggested the need to create the Special Court with definite missions.

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