

The New Government in Macedonia – A Return to the Rule of Law and Democratic Standards

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On 31 May, 2017, a new government led by Zoran Zaev, the leader of the Social Democratic Union of Macedonia (SDSM), was elected into office. The coalition government includes the SDSM with 49 MPs in Parliament (out of 120), and two ethnic Albanian parties, the Democratic Union for Integration (DUI), led by Ali Ahmeti, with 10 MPs, and the Alliance for Albanians, led by Ziadin Sela, with three MPs. A third ethnic Albanian Party, the BESA movement with five MPs, agreed to support the government without being part of the coalition. The transfer of power was in itself traumatic. It was preceded by the refusal of the President over several weeks to hand over the mandate to form a government despite repeated requests from the international community, while violence erupted inside the Parliament on 27 April causing serious injuries to several of the then opposition MPs, including Zoran Zaev himself, and bringing the country to the edge of the precipice.

Prolonged Political Crisis

The election of the new government marked the end of a political crisis that had consumed the entire country over several years with the then ruling party,

the Internal Macedonian Revolutionary Organization - Democratic Party for Macedonian National Unity (VMRO-DPMNE), led by Nikola Gruevski, in power since 2006, imposing an authoritarian rule. Its control over all the state institutions including the judiciary, the media and the electoral process was absolute. In the case of media freedom, the decline was dramatic, Reporters without Borders ranking Macedonia in 111th place in 2017, a huge drop from 34th place in 2009. Civil society organizations were subject to intimidation and harassment by waves of tax inspectors sent by the ruling party, which used fear and intimidation as its weapons of choice to exercise its control over society.

In its Progress Report of 2016, the European Commission stated: “Democracy and the rule of law have been constantly challenged, in particular due to state capture affecting the functioning of democratic institutions and key areas of society.”¹ Meanwhile the reports drawn up by the Senior Experts Group on Systemic Rule of Law (the so-called Priebe reports), requested by the European Commission, pointed to the “massive invasion of fundamental rights” and “the capture of the judiciary and prosecution by the executive power” revealed in the wiretapping scandal of January 2015, with evidence of abuse of power and alleged corrupt practices by government ministers and other senior officials from the VMRO-DPMNE.² But even before 2015, there were warning signs of the deepening political crisis. The forced expulsion of the SDSM opposition MPs from the Parliament chamber together with all journalists on 24 December 2012 was the first of many red lines crossed by

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 9/11//2016 COM (2016) 715 Final

² Recommendations of the Senior Experts’ Group on systemic Rule of Law issues, 2015 and 2017.

the VMRO-DPMNE before being voted out of office five years later. Its failure to respect the rule of law and uphold the democratic standards expected of a country aspiring to join the EU should have alerted the EU institutions to the depth of the worsening crisis. Yet, in its Progress Reports of both 2013 and 2014, the European Commission stated that “Overall the country continues to sufficiently meet the political criteria.”³

When the EU finally did intervene by mediating an agreement between the main political parties in June/July 2015 and again in July 2016, aimed at restoring the rule of law, it failed to put in place any enforcement mechanism to ensure the proper follow up of all the pledged commitments. This contributed to an increased sense of impunity by the VMRO-DPMNE. The European People's Party, of which the VMRO-DPMNE is a member, also shares responsibility by continuing to defend the party and its leader even after both he and senior officials from the party were put under multiple investigations for criminal offences.

New Government - Return to the Rule of Law?

After such a prolonged period of trauma, which has left open wounds in a deeply polarized society, it is small wonder that many referred to the task facing the new government as a poisoned chalice. Yet Zoran Zaev and his government lost no time in setting a new tone, adopting the language of tolerance and respect, and replacing the fear and intimidation of the previous regime with one of openness and transparency. It launched an open dialogue with civil society organizations and with the media, and has in its first year in office demonstrated its inclusive approach towards governance. In so doing, it recognized the crucial role played by civil society organizations who had defied the intimidation tactics of the then ruling party by rallying thousands of citizens from all ethnic communities under the so-called ‘colourful revolution’ calling for a return to the rule of law.

This is also an important lesson for the EU, which should do more to recognize and support the role of civil society and the media in governance, not just in Macedonia but also in the entire region. It is they

who are best placed to ensure government accountability in the absence of the normal checks and balances we take for granted in functioning democracies.

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The government also demonstrated its commitment to the much needed and long overdue reforms set out by the EU and the recommendations contained in the above mentioned reports of the Senior Experts' Group. Within two months from taking office, the government adopted the so-called 3-6-9 programme covering the most urgent reforms and recommendations. These relate in particular to the proper and independent functioning of the judiciary, law enforcement and prosecution, reform of the security and intelligence services with effective parliamentary oversight mechanisms, as well as independence of the regulatory, supervisory and oversight bodies, such as the Commission for the Prevention of Corruption. The government's task however is made all the more difficult by the fact that so many of the officials appointed by the previous regime remain in place. The Prime Minister has been extremely cautious and rightly so, to avoid a repetition of past practices where the criteria for the appointment of senior officials to these bodies was their allegiance to the ruling party rather than their expertise and competence.

‘No Justice, No Peace’

In addition to restoring public confidence in the state institutions, the most urgent priority for the government remains that of ensuring due process for all the

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions. 16/10/2013 COM (2013) 700 Final and 8/10/2014 COM (2014) 700 Final

cases of criminal activities, abuse of power and corruption brought to light in the wiretapping scandal, now over three years old. The mantra of the 'colourful revolution' was 'No Justice, No Peace.' Despite the best efforts of the Special Prosecutor's Office established in September 2015 to investigate these cases, no one has yet been successfully convicted, adding to the perception of impunity. The legacy of a highly politicized judiciary remains a serious obstacle. Whether the judiciary will of itself undertake the necessary reforms and conduct itself as an independent institution in a functioning democracy based on the rule of law remains an open question. In the partisan politics which dominated the country for so many years, only time will tell whether those judges, however small in number, who acted as agents of the VMRO-DPMNE, will change their behaviour and fulfil their responsibilities as expected from an independent judiciary free from political pressure.

Coalition Dynamics

Another huge challenge facing the Prime Minister is that he is leading a coalition government with competing interests at stake. This was brought to the fore by the insistence of the ethnic Albanian coalition partners, in particular the DUI, for the adoption of a language law, giving increased recognition to the use of Albanian alongside the Macedonian language. Although this was part of the coalition agreement, the manner in which it has been pushed through Parliament has become a source of tension within the coalition government.

After the President, who remains closely aligned to the VMRO-DPMNE, refused to sign the bill into law, it returned to Parliament for further discussion and a second vote. The VMRO-DPMNE then tabled 35,000 amendments, even though, according to the DUI leadership, this law had been agreed by the VMRO-DPMNE in their aborted coalition negotiations in January of last year. While the opposition was effectively trying to block the work of Parliament by tabling so many amendments, all attempts by the Prime Minister to gain more time in building a consensus on the way forward with the opposition were rebuffed by the DUI leadership. With the governing coalition's majority in Parliament being razor thin, the continued support from DUI remains vital for the

government's survival, leaving the Prime Minister with little if any margin for manoeuvre.

The inevitable fallout following the adoption of the law in March this year with the opposition's predictable parliamentary boycott could have been avoided had the DUI agreed to submit the proposed law to the Venice Commission for its opinion prior to adoption. The law will in any case have to go to the Venice Commission for its opinion. It is also likely that the opposition will refer the law to the Constitutional Court. In this fragile environment it is questionable whether this law actually does anything to enhance inter-ethnic relations. Quite the contrary, the manner in which the DUI behaved in pushing this law through Parliament gives the impression that its motivation was purely partisan with little regard for the overall impact in the country.

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It is worth noting that ever since the establishment of the DUI as a political force in the country following the 2001 conflict and the EU/NATO-mediated Ohrid Framework Agreement (OFA), it has been in a governing coalition for 13 of those 17 years, first with the SDSM government up to 2006, which successfully spearheaded the constitutional reforms required by the OFA, and then with the VMRO-DPMNE government from 2008 to 2017 (between 2006 -2008, its rival ethnic Albanian party DPA was in the coalition). By remaining so long within the previous government, even after the corruption revelations and increased inter-ethnic tensions caused by the ruling party's nationalist behaviour, the DUI party lost a lot of support from its core constituency having had 18 MPs when it first joined the coalition in 2008. The language law thus provided a golden opportunity for it to burnish its image as a defender of Albanian language rights and

the OFA. But the tactics it used in this respect, in addition to its weak defence of the rule of law and democratic standards during the previous government, leave it open to understandable and justified criticism.

Will the Name Dispute Block EU Accession Negotiations?

Despite these setbacks, and in view of all the progress achieved since it took up office, the government is expecting the European Commission, in its Country Report to be published on 17 April, to reconfirm the recommendation that a date be set for opening negotiations, following suspension of that recommendation since 2015 because of the political crisis. This would signal an important recognition of the government's efforts and commitment to lasting reforms.

However, a huge hurdle remains with the Greek government's insistence that a solution to the long-standing name dispute must be agreed before Macedonia can move forward to the next stage of opening accession negotiations. Prime Minister Zaev has already taken significant steps in engaging with his Greek counterpart and demonstrating the government's good will to find a mutually acceptable solution. Various symbols of the previous government's heavy-handed populist behaviour aimed at glorifying Alexander the Great are being or have already been dismantled. The government's good faith is further evidenced by the many overtures it has made to strengthen relations with its neighbours, such as the Friendship agreement concluded with Bulgaria in August of last year.

Will this be sufficient to satisfy the Greek government, which continues to insist that Macedonia should change its constitution to eliminate all elements of what the Greek President repeatedly calls "the irredentism of Macedonia," even though the constitution was already changed in 1995 in the face of a 19-month blockade imposed by the Greek government? Although the negotiations to resolve this dispute continue to be led by UN mediator Matthew Nimetz, when it comes to the EU the Macedonian government is clearly at a disadvantage. The perception remains that with Greece as a member

of the EU, the latter does not act as an honest broker or a neutral player. Quite the contrary, the EU gives the impression that it is hiding behind Greece and will not put any pressure on the country even after the many concessions that Macedonia has already made in this dispute. The danger remains that for the sake of getting the green light from the European Council for the opening of accession negotiations, Macedonia will be forced to make concessions which will increase internal divisions and could be counterproductive in the long run.

This dispute underlines the negative impact of individual Member States holding the accession process hostage to bilateral disputes. Not only does it undermine the element of fairness in the conditions set for accession, it also fuels a nationalist agenda as is clearly the case in Macedonia, and increases deep mistrust towards the EU. Does this not go against all the principles and values on which the European integration project is based?

Conclusion

As this article underlines, the challenges facing the new government remain vast and complex. For the Prime Minister to succeed in the long run, he will need to maintain a firm hand on the tiller to keep the ship of state afloat and sailing on an even keel. He will need to keep the coalition united to avoid the danger of early elections which the opposition has been campaigning for right from the beginning. Although the local elections last October gave an overwhelming vote of confidence for the new government with the coalition winning over two-thirds of the 82 municipalities, the government will need more time in order to consolidate the positive change in the political and legal environment.

Support from the EU and the opening of accession negotiations would give the government much needed breathing space. It would also give enhanced legitimacy to the government's efforts to promote inclusive governance based on the rule of law and proper functioning of democratic institutions, which is so badly needed in the Western Balkan region. In other words, strong institutions as opposed to 'strongmen'.⁴

⁴ FOUÉRÉ Erwan. "Is the EU turning a blind eye to the 'new strongmen' of the Balkans," Centre for European Policy Studies, 11 July, 2016.