

A word is a word!

How is the Przhino Agreement Implemented?

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МРЕЖА

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ПРАВА НА РЕПУБЛИКА
МАКЕДОНИЈА



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СИТЕ ЗА ПРАВичНО СУДЕЊЕ
TE GJITHË PER GJYKIME TE DREJTA
SARINE BASO NJAMALO KRISIPE



НВО ИНФОЦЕНТАР

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About the Agreement

The Przhino Agreement,¹ or the June/July Agreement as the International Community prefers to call it, is the most recent agreement signed by the leaders of the four primary Macedonian political parties for resolving the political crisis with international assistance.²

[The Agreement consists of:]

- A basic text comprising the Agreement as of 2 July 2015
- Annex of the Agreement as of 19 June 2015
- Protocol of the Agreement as of 2 July 2015

Due to the failure to reach an agreement on 2 June 2015 regarding key issues related to the composition of the “government for the transitional period”, the Annex of the Agreement only confirms the continuation of negotiations and links the return of the opposition to Parliament with reaching an agreement on the composition of the government. Finally, the Protocol of the Agreement resolves the most important outstanding issues on the composition of the government for the “transitional period”.

The signatories of the Agreement are the leaders of the four biggest political parties in the Republic of Macedonia: VMRO-DPMNE, SDUM, DUI and DPA. All three parts of the Agreement contain solely signatures, not the names of the signatories nor the names of their parties, which are only referred to in the provisions of the Agreement.

The parties are committed to ensuring inclusiveness in the implementation of the Agreement through “coordination and consultation with the main parties in the country” (point 2 of the Agreement). The Agreement also stipulates openness “to signature by interested political parties”. This inclusiveness and openness was not present during the course of the implementation of the Agreement. On the contrary, only the four biggest political parties exclusively participated in both the negotiations and the implementation of the Agreement. As they were not present at the negotiating table, some smaller parties in a joint letter to the ambassadors of US and EU presented their views on issues related to the electoral process. Although experts and CSOs were consulted on some topics, in the negotiating format “four party leaders” + mediator + observers/guarantors there was no space for presence of other parties nor the civil sector, even in ad hoc situations.

¹ Named after the toponym of the settlement in Skopje where it was signed.

² The EC 2015 Report describes the crisis in the following wording: *This year the Republic of Macedonia has faced its worst political crisis since 2001. The divisive political culture, lack of compromise and breakdown in dialogue took the form of a continuing and protracted political crisis, including a boycott of parliament by the main opposition party³ and further erosion of trust in public institutions. The crisis deepened further with the publication of intercepted conversations including senior government and governing party officials suggesting breaches of fundamental rights, interference with judicial independence, media freedom and elections, and politicisation and corruption in various fields.*

[The role of the international community: (too) high expectations?]

The strong role that the international community played in both reaching and implementing the Agreement is not apparent from the Agreement's provisions. The representatives of the European Union, the United States of America and the EU member states describe their role primarily as lending "help" or "support" in resolving the political crisis.³ This may explain their unwillingness to further engage in resolving the political crisis leading up to the Kumanovo events on 9 and 10 May 2015.

In reality, the Agreement largely depends exactly on the representatives of the international community who effected strong diplomatic pressure at each critical moment of the negotiations, as well as the implementation. The European Union is involved in the process of resolution of the crisis through the Commissioner for European Neighbourhood Policy and Enlargement Negotiations, Johannes Hahn, who has visited Macedonia four times in the period between June and October 2015. His visits were always related to important and difficult moments of standstill in negotiations, often before the expiry of the final term for accomplishing a certain provision of the Agreement. The European Commission has hired an expert as a mediator for the implementation of the Agreement. MEPs Eduard Kukan, Richard Howitt and Ivo Vajgl are occasionally involved in the negotiations, primarily as vanguards of the Commissioner. On behalf of the United States, in addition to the Ambassador, the Assistant Secretary of State Victoria Nuland was also involved.

In practice, the main burden of the implementation of the Agreement on the side of the international community was carried out by the mediator Peter Vanhoutte. Mediation includes direct involvement in drafting legislation arising from the Agreement. Initially not entirely open to the public, Vanhoutte intensified contact with the public from September 2015 onwards, particularly with the media. Practically, Vanhoutte is the most relevant source of information related to the negotiations and the implementation of the Agreement.

[Goals and principles of the Agreement]

Even though the Agreement itself has no particular structure or subheadings, it is evident from its content that the first four points of the Agreement and the last point of the Protocol define its principles and objectives:

[The principles on which the political parties have agreed are:]

- Acting in the interest of all citizens and communities
- Commitment to Euro-Atlantic processes and democratic principles
- Respecting the democratic principle of political accountability
- Involvement of all major political parties through a process of consultation and coordination
- Respecting the Agreement in full and in good faith; avoiding any new impediments including those in relation to the holding of elections on 24 April 2016.

The main goal of the Agreement is "to bring the country forward on its Euro-Atlantic path."

³ On 15 July, the American Ambassador, Jess Baily, welcomed the Agreement reached by Macedonian political leaders to address the political crisis in Macedonia: "Macedonia won. I want to commend the leaders who participated last night and put the citizens' interest[s] first and moved to resolve the political crisis. [T]his agreement and the implementation of it – which will require work, as you know, over the next several months... will propel Macedonia's Euro-Atlantic integration forward. But I want to assure you that the United States and our other international partners – the EU, the OSCE – will be there to help you, to help all parties in this process to see that it is implemented."

To achieve this, the parties agreed to work on resolving the key challenges that the country faces in order to:

- Consolidate economic and democratic development
- Strengthen inter-ethnic relations
- Ensure full implementation of the Ohrid Agreement
- Strengthen good neighbourly relations
- Enhance the international reputation of the country

This formulation is an attempt to (generally) identify the main problems the country faces. Given that the text of the Agreement is a compromise, the real reason remains unidentified. In reality, the main issue is the malfunctioning of the constitutional order of the Republic of Macedonia, which itself presents the risk of an even bigger crisis, including one of multi-ethnic character, with a potential for spill-over in the region.

As a 'cure', the Agreement foresees early parliamentary elections and a "transitional period", which should ensure free and fair elections, fully in line with European standards. The election date – 24 April 2016 – is determined by the Protocol of the Agreement.

We hereby analyse the implementation of the Agreement, grouped within several clusters:

(NON)IMPLEMENTATION

1. Organization of the government that will conduct the elections
2. Return of SDUM in the Assembly
3. Resolving the wiretapping scandal
4. Implementation the European Commission's recommendations for reform
5. Electoral bodies and the organization of elections

[Government that will conduct the elections]

The term "transitional government" was avoided, as was wording pertaining to the establishment of a "transitional government". The achieved compromise relates to: a) in the first phase – limited participation of the opposition in the government (only SDUM) in several ministries considered significant for the organization of the elections; b) in the second phase – withdrawal of the Prime Minister and the appointment of a new one, upon proposal by the same ruling party, VMRO-DPMNE.

The first phase was realized with a delay of 18 days. The primary disagreement concerned the competencies of the newly appointed ministers and (additional) deputy ministers, as well as the veto right of the additional deputy ministers. In this respect, VMRO-DPMNE specifically insisted on decreasing the competencies of the Minister of Interior (the office representing the biggest concession by the government during this phase).

Differences were formally overcome by strong international pressure, after which the Law on Government was amended under urgent procedures. There are already disagreements in practice over the implementation of this Law. The State Election Commission annulled the veto of the additional Deputy Minister of Finance (within the SDUM) on the decision of the Minister of Finance for additional indebtedness. Following on, the SDUM initiated an administrative court proceeding, because the State Election Commission in its old composition did not have such a mandate. The new composition in accordance with the Agreement took office, following a delay, at the end of December 2015.

The work of the ministers and additional deputy ministers in their respective ministries is characterized by conflicts and confrontations, with frequent disagreements exposed in public. Such "communication" has a negative influence on the work of the ministries and is contrary to the proclaimed objectives and principles of the Agreement.⁴

⁴ A complaint has been initiated against the illegal decision made by the former SEC composition. SDUM website. 22.12.2015 Available at: <http://www.sdsm.org.mk/default.aspx?mId=55&agId=2&articleId=13224>.

According to the steps taken thus far, one of the key priorities of the ministries and additional deputy ministers of the SDUM appears to be revealing crime on behalf of the government, resulting in criminal charges and public statements.⁵

The withdrawal of the current and the appointment of a new Prime Minister from within VMRO DPMNE is the next key and critical point of the Agreement, which is now being problematized (keeping in mind already open discussions on the need to put off the date of the elections) due to a delay in the implementation of the provisions of the Agreement.

[Return of SDUM in the Assembly]

SDUM returned to the Assembly within the foreseen deadline on 1 September 2015, after which the working bodies of the Assembly were completed by their representatives, in line with the Rules of Procedure.

[Resolving the wiretapping scandal]

a) Treatment of wiretapped materials

SDUM respected the obligation not to publish any wiretapped materials following the signing of the Agreement.

However, SDUM handed over the materials to the Special Public Prosecutor 15 days after she requested them, with an explanation that there had previously been no conditions for their treatment.

Outside of the provisions of the Agreement and contrary to what had been agreed upon during negotiations, members of the Parliament of the ruling VMRO-DPMNE and DUI, Krsto Mukovski and Talat Xhaferi, submitted a draft law on the prohibition to possess, process, publish and use materials from the illegal interception of communications, a law that contained elements of censorship.⁶ This caused numerous reactions in the public, especially among civil society.

Upon the intervention of the international community, the law was withdrawn and upon suggestion of mediator Vanhoutte, two laws were adopted: the Law on Protection of Privacy and the Law on Protection of Whistle-blowers.

b) Special public prosecutor

The functioning of the Special Public Prosecutor remains the most positive element thus far in the implementation of the Przhino Agreement, despite all the obstructions related to the appointment of the prosecutors (on behalf of the Council of Public Prosecutors), as well as to ensure proper conditions for the work of this prosecutor's office (on behalf of the government).

⁵ Irregular inspection supervision at centres for social affairs. MTSP website. 9.12.2015. Available at: http://www.mtsp.gov.mk/pocetna-ns_article-vonreden-inspekciski-nadzor-vo-centrite-za-socijalni-raboti.nsp.x; Remenski pressed criminal charges against Spasov. MIA. 28.12.2015 Available at: <http://www.mia.mk/mk/Inside/RenderSingleNews/134/132964460>; Minister Spasovski held a press-conference and briefing with journalists. Mol website. 7.12.2015. Available at: <http://www.mvr.gov.mk/vest/1009>. 31 Press release. Mol website. 10.12.2015. Available at: <http://www.mvr.gov.mk/vest/1034>. We have started revealing misuses. SDUM website. 4.12.2015. Available at: <http://www.sdsm.org.mk/default.aspx?mId=55&agId=5&articleId=13031>

⁶ Available at: <http://sobranie.mk/materialdetails.nsp.x?materialId=c54e08d1-11f2-4d0b-ab1c-fe6e1ef5f22b>.

Despite continuous attempts on behalf of the Government to violate the principle of autonomy of the special prosecutor's office, this new institution has respected the legal deadlines and in the first transfer of cases, established subject matter jurisdiction over 34 cases. The prosecutor's office gave priority to five cases, including that of Putsch.

A 'sword of Damocles' hanging over the work of the special prosecutor's office⁷ is the submitted request for assessing the constitutionality of the law on its establishment. The Constitutional Court has not yet considered this request.

c) Oversight role of the Assembly

Even though the opposition presides with the Oversight Committee for Monitoring the Interception of Communications by the Ministry of Interior, the Administration of the Financial Police, Customs Administration and the Ministry of Defence and Oversight Committee for Monitoring the Work of the Administration for Security and Counter Intelligence, as well as the Intelligence Agency and the Parliamentary Committee of Inquiry into the Wiretapping Scandal, there are no concrete results pertaining to the work of any of these bodies. The committees have not submitted their initial reports on this matter, which were due in November 2015.

The negotiations on the Rules of Procedure of the Inquiry Committee took an extended period of time to complete, especially regarding provisions related to public transparency. Former Minister of Transport and Communications, Mile Janakieski, former Minister of Interior, Gordana Jankulovska, Head of the Cabinet of the Prime Minister, Martin Protoger and the former Director of the Security and Intelligence Directorate, Sasho Mijalkov, did not respond to the invitation to give testimony to the Committee, whereas the testimony of Prime Minister Gruevski was conducted behind closed doors. In addition to Prime Minister Gruevski, the only other individual that responded to the invitation to give testimony to the Committee was the Minister of Finance, Zoran Stavreski. However, like Gruevski, he asked for the session to be closed.⁸ These actions defy the very reasons behind the existence of the Inquiry Committee, the public and transparent operation of which was to contribute to determining political responsibility for the wiretapping as one of the objectives of the Agreement.

⁷ In her reaction to the draft law on public prosecutor salaries, Special Public Prosecutor Janeva stated that the provision authorizing the Public Prosecutor of the Republic of Macedonia to decide, following consent by the Finance Minister, on the bonuses of public prosecutors in this office breaches established principles of autonomy and financial independence. The government then submitted a modified draft law prescribing that the amount and method for defining bonuses will be regulated by an act from a public prosecutor who is the head of a public prosecutor's office. After several delays, at a session held on 30 December 2015, the Assembly of the Republic of Macedonia adopted the Law on Public Prosecution Service of the Public Prosecutor's Office for Pursuing Criminal Acts Related to and Arising from the Contents of the Illegal Interception of Communication, as proposed by the government, during a shortened procedure. The proposal was previously submitted on 21 December by a group of MPs from SDUM, NSDP, LDP and PDT, but was not put on the agenda, because MPs from VMRO-DPMNE voted against this proposal, explaining that the subject matter had already been regulated by other legislation on the public prosecutor's office and the public prosecutor's service and administration; as a result, the proposed law was placed into a privileged position. On 25 December, the VMRO-DPMNE MP, Antonio Miloshoski, stated that his party "expresses serious reserve" regarding the actions of the Special Public Prosecutor, Katica Janeva, who "has [developed into] a [typical] instrument of Zoran Zaev". Available at: <http://vmro-dpmne.org.mk/?p=28618>.

⁸ In order to encourage Minister Stavreski to speak publically, the Chairperson of the Committee, Shilegov, read out the questions that would be posed to him prior to the session. Since Stavreski did not agree to public testimony, Shilegov interrupted the session, stating that VMRO-DPMNE has made a farce of the operation of the Committee. Shilegov: Publically announces schedule of witnesses for illegal wiretapping: Available at: <http://www.sdsm.org.mk/default.aspx?mld=55&agld=6&articleId=13072>

[Implementing the European Commission's recommendations for reform]

From the Agreement, the form in which 'agreement' should be reached on reforms pertaining to Chapters 23 and 24 are unclear. The announced action plan by the government on the implementation of Urgent reform priorities has not been published. The status of the action plan is unknown to the public. There was no debate on the plan in parliament, as suggested by the EU. Only the National Council on Euro-integration held a public debate on the matter of urgent reform priorities, but without deeper analysis on their implementation. This is the only point in the Agreement that foresees obligations for the EU in terms of facilitating the Agreement, which was realized through mediator Vanhoutte. The deadline for dialogue is long overdue and results have not yet been achieved.

The recommendations of the EC on the systemic rule of law issues have not been implemented in terms of urgent reform priorities.⁹

[Dialogue was to be conducted within the following thematic areas concerning urgent reform priorities:]

- Rule of law and judiciary
- De-politicization of public administration
- Electoral reform
- Media

The media is particularly critical for enabling fair election conditions, as they are under government control. This has been shown by the ResPublica analysis, which noted significant similarities in the selection of themes and sources of information, as well as framing the news that is presented by the public broadcaster, TV Sitel, TV Alfa and Kanal 5. Additionally, the analysis shows the presence of hate speech, discrimination, the use of a negative tone and a failure to act according to the Journalists' Code of Conduct.¹⁰ Despite the fact that negotiations on reforms in the media sector have begun, they have to date yielded no results.

Regarding the status of the implementation of urgent reform priorities, Commissioner Hahn held a two-hour meeting with representatives from civil society, who prior to the meeting and under the auspices of the EU Delegation, provided their position within the thematic working groups. In parallel, the Deputy Prime Minister for European Affairs, Fatmir Besimi, had a series of consultations with CSOs. Despite the fact that these steps have been deemed as positive, this approach did not continue and did not develop in a specific form or practice.

⁸ In order to encourage Minister Stavreski to speak publically, the Chairperson of the Committee, Shilegov, read out the questions that would be posed to him prior to the session. Since Stavreski did not agree to public testimony, Shilegov interrupted the session, stating that VMRO-DPMNE has made a farce of the operation of the Committee. Shilegov: Publically announces schedule of witnesses for illegal wiretapping: Available at: <http://www.sdsm.org.mk/default.aspx?mId=55&agId=6&articleId=13072>

⁹ Implementation of the Urgent Reform Priorities is analysed in a separate document of Network 23, The Urgent Reform

¹⁰ Priorities slower than the restoring of un-reformist practices, January 2016 Available on: http://www.respublica.edu.mk/images/modem/attach/MODEeden_18%20noemvri%20_23%20dekemvri.pdf

[Organization of elections and electoral bodies]

Significant time and energy was spent on this part of the Agreement compared to achieving its final results. The amendments of the Electoral Code only secured the necessary minimum for implementation of the Przhino Agreement.

The realization of key commitments that have a major impact on free and fair elections was achieved at a considerably late stage. This primarily refers to the appointment of State Election Commission members on 15 December 2015 by a delay of 137 days.

The question remains as to the capacity of the Commission to realize increased responsibilities, particularly keeping in mind the already established culture of division within the Commission along party lines, as opposed to creating an institutional identity based on the respect of democratic standards on elections and mutual trust.

Work on one of the key conditions for fair elections, the revision of the voters list, has not yet started. Political resistance towards this responsibility is evident, considering that according to the recommendations of OSCE/ODIHR, the revision should have been completed years ago. An accurate voters list remains one of the key criteria for the forthcoming elections.

Following the initial modest discovery pertaining to the illegal issuing of ID cards and the publication of the vague "ID forfeiting affair" the MOI announced that following an investigation,¹¹ 424 cases involving the illegal issuing of ID cards to residents of Pustec, Albania, had to date been detected. The Minister of the Interior, Spasovski, stated at a press conference that employees in the Directorate for issuing ID Cards admitted to illegally issuing ID cards at the order of their superiors.

It is essential that further actions linked to the organization of elections and electoral bodies lead to ensuring the credibility of the elections and that the main political parties recognize subsequent election results. This is a key factor for the success of the Agreement.

[Short term delays – long-term impact]

The average delay for implementation of the provisions in the Agreement is 43.44 days. The longest delays are related to the functioning of the State Election Commission, along with the implementation of urgent reform priorities.

[By-products of the Agreement]

As an urgent measure for resolving the political crisis, the implementation of the Agreement itself does not infer an automatic return to democratic processes. On the contrary, the Agreement has led to decisions being made within the narrow circle of party elites, alongside mediation provided by the international community. All of the laws necessary for the implementation of the Agreement were adopted using an urgent procedure. The public has been largely excluded from the process. Practically, the implementation of the Agreement contains a "democratic deficit" and this has led to a substitution of democracy, which will no doubt have extremely negative consequences.

Although such urgent measures can be justified by the aim to prevent further destruction of the democracy in the Republic of Macedonia and an end to autocracy and dictatorship, they must be limited in time. Therefore, the urgent implementation of the key provisions of the Agreement and their significant impact on conducting credible elections is imperative for ensuring that political processes be channelled according to their "normal course".

¹¹ Press conference given by Minister Spasovski: Persons without residence were issued personal IDs and were on the voters list. Mol website. 23.12.2015 Available at: <http://www.mvr.gov.mk/vest/1143>.

Illegal identity cards of Pustec residents with addresses of buildings owned by the Republic of Macedonia. Mol website. 30.12.2015 Mr. Available at: <http://www.mvr.gov.mk/vest/1186>.

[Conclusions and recommendations]

Conclusions

The Przhino Agreement has been implemented only partially and with the decisive influence of the international community for the implementation of its key provisions.

The commitments undertaken by the parties' signatories: to act in the interests of citizens and to take political responsibility while respecting democratic standards, factors that are not essentially respected, especially by the ruling party. Contrarily, strategies for gaining full control over state institutions continues to be implemented.

The principles of the Agreement are essentially not being adhered to.

For the success of the Agreement, it is essential that the process leads to credible elections and that the results of the elections be recognized by the primary political parties.

With the current implementation status of the Agreement, there are no conditions for fair elections. The least fulfilled and yet essential conditions for fair elections are:

- Revision of the voters list
- Objective media reporting

Recommendations

1.The remaining obligations arising from the Agreement for organization of the government, namely the resignation of the Prime Minister and the appointment of a new Prime Minister from within VMRO/DPMNE should be implemented according to the deadline set by the Agreement, i.e., 15 January 2016.

2.With mediation provided by the international community, an annex to the agreement should be signed that will set clear deadlines, obligations and indicators for:

- Revision of the voters list
 - Objective reporting by the media throughout the elections, not only in the pre-election period
- Foreign assistance should be provided for monitoring the implementation of these measures.

3.Amendments of the Law on Media and the Law on Audio and Audio-visual Media Services with the involvement of journalistic associations are necessary for objective and balanced reporting, not only in the pre-elections period, but also during elections and thereafter.

4.Possible change of an election date should be tied to:

- Date of completed revision of the voters list, determined with the support of the OSCE/ODIHR
- Initiating objective monitoring of media reporting

5.The European Commission should regularly inform the public of its findings on the implementation of the Agreement.

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