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**TRANSITIONAL GOVERNMENT BETWEEN THE CONSTITUTION, LAW AND REALITY****Temelko Risteski**FON University, Skopje, N. Macedonia, [temelko\\_mkd@yahoo.com](mailto:temelko_mkd@yahoo.com)

**Abstract:** The transitional government is the result of the agreement between the leaders of the four largest political parties in the Republic of Northern Macedonia - SDUM, IMRO-DPMNU, DUI and DPA, concluded on June 2, 2015 (Przhino Agreement). Following the Treaty, amendments to the Law on Government of the Republic followed. Amendments to this law prescribe that one hundred days before the election of Members of Assembly, and after the Prime Minister's resignation, the Assembly elects a new, transitional government to hold parliamentary elections, led by a new prime minister, who nominates the party with the largest number of Members in the Assembly.

Upon a proposal by the Prime Minister, the Assembly shall elect a Minister of the Interior and a Minister of Labor and Social Policy, on a proposal from the opposition. In addition, on the proposal of the Prime Minister, the Assembly appoints an additional deputy minister in the Ministry of Interior and the Ministry of Labor and Social Policy, nominated by the ruling political party with the largest number of representatives, and in the Ministry of Finance, the Ministry of Agriculture, forestry and water economy and the Ministry of Information Society and Administration, nominated by the political party in opposition with the largest number of members in the Assembly. This model of transitional government was firstly implemented in the early parliamentary elections in 2016. The model is being implemented for the second time since January 3<sup>rd</sup>, this year.

Already during the procedure of nominating members of the Transitional Government, problems arose over the constitutionality of the nomination for Minister of the Interior. The opposition nominated a candidate for interior minister an active-duty colonel of the ARM, contrary to Article 97 of the Constitution of the Republic, according to which state administration bodies in the field of defense and police are headed by civilians who were civilians shortly before the election, at least three years. Although this constitutional provision is clear and unambiguous, part of the expert public, referring to the principle of equality of citizens before the Constitution and the laws and the principle of access to public office of every citizen under Articles 9 and 23 of the Constitution, argued that the proposed candidate could be elected minister. His view was supported by the fact that he has been an expert on security matters and that there had been precedents in the application of Article 97 of the Constitution. The majority of the expert public took a stand that Article 97's aim was to provide civilian control over internal affairs and that the nominee could not be a minister.

As early as the first ten working hours of the work of opposition officials, there was the use of functions for party purposes, contrary to the purpose of forming the Transitional Government - to ensure fair and democratic parliamentary elections in the Republic and contrary to Article 95, paragraph 2 of the Constitution banning political activity in the administration.

Soon after, the scientific and expert public raised the question of the constitutionality and justification of the Transitional Government given the changed conditions in the Republic after 2015. Some have argued that the Transitional Government is an unconstitutional category given the fact that it is not provided for in the Constitution, despite the view that its formation is of high public interest and not contrary to the Constitution. Our view is that the formation of the Transitional Government is imposed by the need to ensure fair and democratic parliamentary elections which are of national interest to the Republic and that it is not contrary to the Constitution, under which (Article 8, paragraph 2) the Republic of North Macedonia is free to do everything which is not prohibited by the Constitution and the law.

The dilemma remains over the justification of the Transitional Government given the changed conditions in the Republic for the last, at least five years, of the Przhino Agreement. But the growing tensions between the citizens on a political basis that grows day by day, speak in favor of the fact that the Transitional Government, as an institution, still needs the Republic.

**Keywords:** constitution, law, transitional government, minister, elections

## 1. INTRODUCTION

The severe political crisis in the Republic of North Macedonia that has long shaken the Republic culminates in the broadcast of the so-called “The Bombs”<sup>25</sup> of the opposition, led by SDUM. It has imposed the need for European Union assistance in its resolving. On June 2, 2015, with the assistance of the leaders of the four largest political parties in the Republic IMRO-DPMNU, SDUM, DUI and DPA<sup>26</sup>, a political agreement was agreed, so-called Przhino Agreement.<sup>27</sup> By this agreement, among other things, has agreed to hold early parliamentary elections. It is agreed to elect a Transitional Government for the preparation and organization of the elections. The normative-legal bases for the election of the Transitional Government were laid down by the Amendments to the Law on Government adopted by the Assembly of the Republic in early 2016.

Amendments to the Law on the Government provide one hundred days before the election of Members of Parliament, and after the Prime Minister's resignation, the Assembly to elect a new, transitional Government to hold parliamentary elections, headed by a new Prime Minister, who is nominated by the party with the largest number of Members of Assembly.

In addition, the Assembly, on the proposal of the Prime Minister, elects a Minister of Interior and a Minister of Labor and Social Policy, on the proposal of the opposition, one hundred days before Election Day for Members of Assembly.

The interior minister is nominated by the party in opposition with the largest number of members in the Assembly, after consulting the two political parties with the largest number of members in the Assembly, and the minister of labor and social policy is nominated the party with the largest number of members in the Assembly.<sup>28</sup>

The law gives the Minister of Interior the opportunity to execute up to 15 dismissals or deployments to a lower or higher position in the ministry, in accordance with the law, as well horizontal layoffs of employees up to 10 percent of the number of horizontal deployments.

Further, in accordance with the law, the Assembly, upon proposal of the Prime Minister, appoints an additional Deputy Minister in the Ministry of Interior and the Ministry of Labor and Social Policy, nominated by the ruling political party with the largest number of Representatives, and in the Ministry of Finance, The Ministry of Agriculture, Forestry and Water Economy and the Ministry of Informational Society and Administration nominated by the political party in opposition with the largest number of members in the Assembly.

The mandate of the Ministers from the opposition and the additional Deputy Ministers shall last until the day of the announcement of the final results of the State Election Commission for the elections for Members of Parliament of the Republic of North Macedonia, after which their mandate shall terminate by law.

Additional Deputy Ministers together with ministers participate in the exercise of the competences provided in the Law on Organization and Work of the State Administration Organs. In this regard, they shall review and sign all acts and documents adopted by the Ministers or persons empowered by them, the Deputy Minister as well as the Secretary of State in the appropriate Ministry, and shall deal with legal, financial and human resources issues related to the organization of elections. Every act within the meaning of this Law shall be submitted to the Minister and the Deputy Minister. The Minister and the Additional Deputy Minister are obliged to approve or reject the act within the meaning of this Law within one day at the latest.<sup>29</sup>

This model of transitional government was first implemented in the early parliamentary elections in 2016. Since January 3<sup>rd</sup>, 2020 the model has been implemented for the second time.

Numerous problems have occurred while re-implementing the model. Problems arose shortly before the election of the Transitional Government and after its election. They stem from differences in the interpretation and application of the Constitutional and legal provisions on the election and work of the Transitional Government.

## 2. CONSTITUTION AND PROPOSING MEMBERS OF THE TRANSITIONAL GOVERNMENT

Under Article 97 of the Constitution of the Republic of North Macedonia, state administration bodies in the field of defense and police are managed by civilians who were civilians for at least three years prior to the election of those functions.

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<sup>25</sup> Audio recordings of conversations between VMRO-DPMNE officials, government and public officials from coalition parties, and other people close to the government suggesting a reasonable suspicion of numerous abuses of power.

<sup>26</sup> Nikola Gruevski, Zoran Zaev, Ali Ahmeti, Menduk Tachi.

<sup>27</sup> The title of the contract comes from the suburb of Skopje where is the building in which the contract is agreed.

<sup>28</sup> See: Article 45 of the Law on Government, [www.gov.mk](http://www.gov.mk)

<sup>29</sup> Ibid, Article 46.

The purpose of this constitutional provision is to create a normative basis in the hierarchically highest general legal act of the Republic for exercising civil control over the police as an armed force to defend the internal order and of the state.

The police, like the military, have weapons. Unlike the military, it is mostly infantry. It consists of pistols, rifles and machine guns. But it also has armored carriers. They are weapons in the army of its armored-mechanized units. Police also have transport helicopters that can easily be turned into combat ones. Numerous and well-armed, she is a holder of great hard power. In turbulent social conditions this hard power can pose a threat to the democratic institutions of society, of course, if it is brought under the control of undemocratic social groups. Therefore democratic society must provide itself with mechanisms of protection. One of those mechanisms is the minister - a civilian who has, on various grounds, separated himself from the police structures, both factually and emotionally. The constitutionalist believed that within three years of civilian life a sufficiently high degree of separation would be achieved that would enable the former uniformed member of the armed forces to hold public office from a minister's chair.

Disregarding this constitutional provision, the opposition nominated an active ARM officer, with a rank of colonel, to serve as interior minister. The defenders of the Constitution referred to the provision of Article 97. In view of the above, they were right.

The word of the Constitution is clear, it cannot be clearer. But in Macedonia the Constitution is not very respected. Although it does not accept case law, precedents are often set. There have also been precedents for the interior minister. Going to those precedents, some members from the ranks of the expert's and scientific<sup>30</sup> public advocated precedent in this case, as well. Some of them (mostly members of the professional public)<sup>31</sup> referred to the provision of Article 9 of the Constitution, according to which the citizens of the Republic of North Macedonia are equal in their freedoms and rights, regardless of their social status. They also took into consideration the provision of Article 23 of the Constitution according to which every citizen has the right to participate in the exercise of public function. This is right, but the provisions of Articles 9 and 23 are the general norms enshrined in Chapter Two of the Constitution which regulates the fundamental freedoms and rights of the individual and citizen. The provision of Article 97 in respect of these two provisions is a special norm that relates to state administration bodies and is transposed in Chapter Three of the Constitution entitled as Organization of State Power. *Lex specialis derogate legi generali* - says the old rule of interpretation and application of legal norms.<sup>32</sup> The special legal norm takes precedence over the general one because it refers to a particular part of social relations over the general one. Moreover, all the representatives of the precedent obviously do not have in view the provision of Article 8, paragraph 2 which reads "In the Republic of Macedonia it is free everything that is not prohibited by the Constitution and by law". The provision of Article 97 prohibits the head of the Ministry of the Interior (police) to be a person who was not a civilian for at least three years prior to the election as a minister.

### 3. LAW AND WORK OF THE TRANSITIONAL GOVERNMENT

According to the Law on Government, with the amendments made to the implementation of the Przhino Agreement (Article 43), one hundred days before the elections for Members of Assembly, and upon prior resignation of the President of the Government of the Republic of North Macedonia, the Assembly of the Republic will elect a new, transitional Government led by a new prime minister nominated by the largest political party which has formed a Assembly's majority.

According to Article 44, paragraph 1 of the Law, the Minister of Interior and the Minister of Labor and Social Policy are elected, and according to Article 45, paragraph 1, additional Deputy Ministers are appointed "for the purpose of organizing elections for Members of the Assembly of the Republic of Macedonia,"

Thus, the transitional government is elected for the purpose of organizing and conducting elections for Members in the Assembly of the Republic of North Macedonia.

But unfortunately, in practice it has been shown that the transitional government can serve as an instrument to promote and implement opposition party politics. In the first 48 hours after the election, ministers and additional deputy ministers from the opposition began to present to the public the "found" conditions and with unscrupulous criticism of those conditions which were in fact the largest remaining after eleven years of the opposition rule. The

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<sup>30</sup> It is word about University professors close to the opposition. They did not deny the unconstitutionality of the proposal, but advocated a precedent because it had allegedly been preceded.

<sup>31</sup> Retired and active generals of the ARM, who did not appear in the mass media, but presented their theses in the various cloakrooms at various meetings on the occasion of Christmas and New Year holidays, thus trying to influence the people involved in the processes of choice of transitional government.

<sup>32</sup> Romac A., *Dicta et regulae Iuris*, (1971), Contemporary Administration, Belgrade.

current government has made efforts to change those situations. Somewhere there were big successes, somewhere smaller, and somewhere just starting. But there were some successes. What has accumulated for years cannot be eliminated for two and a half years (of which only a little more than one and a half years of effective works (due to the three election cycles - local elections, referendum and presidential elections during which he worked with minimal capacity).

The Constitution of the Republic in Article 95, paragraph 2 prohibits political organization and political acting in the organs of administration.

Article 3 of the Law on Organization and Operation of the State Administration Organs lists the principles of operation of the state administration organs: legality, accountability, efficiency, cost-effectiveness, transparency, equality and predictability. Article 2 of this law stipulates: The state administration organs, as part of the executive branch, are established in the areas important for the performance of the functions of the state and for the effective exercise of the rights and duties of citizens and legal entities.

It follows from these provisions of the Constitution and the laws that there is no place for political action for a particular party and political loyalty to a particular party in the organs of administration. There is room for loyalty only to the citizens - to create conditions for fair and democratic parliamentary elections.

The organs of administration are the service of the citizens - to all citizens of the Republic, regardless of gender, race, color, national and social origin, political and religious beliefs, property and social status. Therefore, officials, civil servants and other persons employed in public administration bodies, when in the premises of the ministry or when performing duties outside the ministry, may not refer to the views of political parties in the Ministry, belonging to or favoring them, but only to the Constitution, laws and by-laws. In performing their function, they are officials and officers of all citizens of the Republic. Outside of office or service they have complete freedom of thought, belief, thought and public expression of thought.<sup>33</sup>

Transitional government must not be used as a means of increasing the chances of a political power struggle. Such use is an abuse of power. Abuse of power is prohibited. When it takes the form of abuse of power, it is punishable.<sup>34</sup>

#### 4. RATHER THEN A CONCLUSION

Following the great political crisis in the Republic of North Macedonia, starting from the parliamentary elections in 2014, on June 2, 2015 the leaders of the four largest political parties SDSM, VMRO-DPMNE, DUI and DPA (Zoran Zaev, Nikola Gruevski, Ali Ahmeti and Menduk Thaci) concluded an agreement, the so-called Przhino Agreement (by the name of the settlement - Przhino where is the facility where the agreement was concluded is located). On June 15, 2015, the agreement was amended. The agreement is agreed on behalf of party membership "that they must act in the interests of all citizens and respond to all the critical and previously unnoticed challenges facing the state, in order to consolidate economic and democratic development, strengthen inter-ethnic relations, ensure full implementation of the Ohrid Framework Agreement, strengthen good neighborly relations and the international position of the state, thereby bringing the country closer to the goal of its Euro-Atlantic integration."

In addition, they agreed to "establish a" transitional period "that will begin immediately with the signing of this agreement and end with free and fair elections, fully conducted in accordance with European standards at the end of April 2016".

In order to hold elections for Members of Assembly of the Republic they agreed 100 days before the elections to elect a new Transitional Government that would organize and conduct the elections. The legal basis for the election and composition of the Transitional Government was laid down in the Law amending the Law on Government. It was soon adopted.

Having in mind the transitional government outlined above, we can conclude that everything is well-arranged and well-regulated. But in the political culture of Macedonian politicians, agreed and regulated means almost nothing. Instead of consistently adhering to constitutional and legal norms as well as agreed-upon provisions, the practice of theirs non-compliance by the highest state authorities is slowly but surely being established. There has been a persistent advocacy of precedents over the selection of ministers in the field of defense and home affairs. Opposition "Courier" on January 31 writes: "Precedents in the world form and change the law and become an act that everyone in the future invokes and thus becomes a practice, not in Macedonia." The author of the text does not know, nor does

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<sup>33</sup> See: Article 16 and Article 20 of the Constitution of the Republic of North Macedonia.

<sup>34</sup> There are grounds to suspect that an opposition minister in the Transitional Government committed a criminal offense of abuse of office under Article 353, paragraph 1, of the Criminal Code; while an additional deputy minister also from the opposition committed the crimes of unauthorized recording under Article 152, paragraph 2 and harassment in the performance of the service under Article 143 of the Law.

not want to know that in Macedonia we have a system of European-continental law, not an Anglo-Saxon or case-law system.

Finally, in terms of the election of a person to the post of Minister of the Interior under Article 97 of the Constitution, reason prevailed. The transitional government was elected. Opposition ministers were expected to work with ministers from the ruling coalition to set the stage for a fair and democratic election. Instead of cooperation, confrontations were at times fierce. Instead of working to serve the citizens, as required by the Law on the Organization and Work of the State Administration (Article 2), they have turned into a "hostile" group within the government in order to act behind the back of the opposition. Their actions are largely reduced to fierce propaganda against the government coalition. The law in Article 2 unambiguously states that administrative bodies are formed, *inter alia*, for the effective exercise of the rights and duties of citizens and legal entities. Propaganda in favor of the opposition does not exercise the rights and duties of the citizens and legal entities, but assists the opposition in creating a terrain for re-coming to power. Therefore, propaganda is a political act in the bodies of the administration, which is prohibited by Article 95, paragraph 2 of the Constitution. Acting propaganda and failing to co-operate with their counterparts from the ruling coalition, ministers and additional deputy ministers from the opposition have significantly reduced the efficiency of government bodies in serving citizens. Efficiency is the most important principle in the service of the citizens by the administrative bodies. Other principles (legality, accountability, cost-effectiveness, transparency, equity and predictability) are in line with this principle. The lack of efficiency creates citizens' dissatisfaction. That is exactly what the opposition wants. The basic desire of citizens is to have a government that will effectively service them and thereby enable them to have a higher quality of personal and community life in society. That is why they do not want inefficient government, even transitional government.

Given the fact that the Transitional Government carries inefficiency in servicing the citizens due to the inconsistency of the opposition ministers and additional deputy ministers, the question arises as to its justification. In this respect, the Republic of Macedonia is a poor country with unstable social and economic relations. In conditions of instability of socio-political relations is easily to manipulate with citizens. Manipulated citizens, in unstable social relations, do not guarantee fair and democratic parliamentary elections. That is why we stand firmly on the vestige that the Transitional Government needs the Republic. But the period of one hundred days before the parliamentary elections in which she rules is too long. It needs to be trimmed. Therefore, we propose that its mandate should start on the first day after the day of announcing the elections and last until the day of the announcement of the final results by the State Election Commission for the elections for Members of Assembly of the Republic of Macedonia. According to the Electoral Code (Article 8-a), after the announcement of the elections, no investment activities with budget funds are allowed, no payments from the budget are allowed, except regular. Then, commencement of employment procedures in state bodies or institutions or termination procedures in them are not allowed, while the initiated procedures are put on hold, etc. So there is a complete pre-election situation, which is a real setting for transitional government. Until the elections' calling, the existing (regular) government should be left to discharge its responsibilities. That means, first of all, the administrative bodies to work unencumbered, in accordance with the principles of Article 2 of the Law on Organization and Operation of the State Administration Organs, and thus to work without obstacles to provide services to the citizens in the areas of social life for which they are established.

## LITERATURE

- Alder J., (2007), *Constitutional and Administrative Law*, 6th edition, Palgrave, Macmillan, New York.
- Illych M., (1998), *Administrative Law and Other Laws*, Official Gazette FRY.
- Jovanoski Z., (2020), *Administrative Law*, Military Academy, Skopje.
- Mitevski M., (2015), *System 2014*, Mitevski Mancho, Skopje.
- Pusić E., (1986), *Science on Administration*, Faculty of Law, Zagreb.
- Risteski T., (2010), *Public and State Administration, Lecture Concepts*, FON University, Skopje.
- Romac A., (1971), *Dicta et regulae Iuris*, Contemporary Administration, Belgrade.
- Tomich Z., (2011), *Legal, Upright, Administrative*, Official Publisher of the Republic of Serbia, Belgrade.
- Constitution of the Republic of North Macedonia with Amendments from (2019), [www.pravdiko.mk](http://www.pravdiko.mk).
- Law on Organization and Work of the State Administration Organs - Consolidated Text (2019), [www.pravdiko.mk](http://www.pravdiko.mk).
- Election Code - consolidated text (2019), [www.pravdiko.mk](http://www.pravdiko.mk).
- Law on Government with Amendments (2019), [www.gov.mk](http://www.gov.mk).