

# IN QUEST OF AN EFFECTIVE DISCUSSION: *KEY CONSTRAINTS ABOUT THE FREEDOM OF SPEECH EXERCISED FROM THE PARLIAMENTARY STAND*

Policy Brief

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## INTRODUCTION

On three occasions in recent years (2008, 2010 and 2013), the parliamentary political parties voted to amend the Rules of Procedure of the Assembly thereby significantly restricting the freedom of discussion by members of Parliament. Such constraints equally address the duration of the speech acts as well as their frequency, and refer to constraints applicable both to the plenary meetings and committees' hearings. The procedural changes over the years have created circumstances of extensive regulation, which greatly affect the quality of the discussion in the Assembly as well as the capability of the legislature to effectively perform the role of a controller of the operation of the executive branch. Thus, further inequality between the executive and legislative powers in the Republic of Macedonia was extended, thereby disempowering the Assembly to effectively participate in the adoption of legislation and policy making.

This brief on public policy, studies the impact of the amendments to the Rules of Procedure, which affect the quality of discussion rendered in the Assembly. We consider the different restrictions on various parliamentary procedures to have adverse effects on the development of the quality of

discussion, inter-parliamentary democracy and comprehensive quest of a consensus on pertinent issues, as a principle of an inclusive and democratic decision making. Rather, we propose to have the sections of the Rules of Procedure which address the restrictions on speech acts re-examined, and to provide for such provisions so as to enable circumstances that will generate greater quality of discussion in the Assembly as a significant factor in the quality, legitimacy and effectiveness of the legal acts and the parliament decisions. In the design of the recommendations, the example of the Assembly of the Republic of Slovenia was considered, whose procedural provisions, unlike the Macedonian ones, to a greater extent facilitate the development of a parliamentary discussion.

## SUBORDINATE TO THE GOVERNMENT? THE POSITION OF THE ASSEMBLY IN THE EXERCISE OF POWER SHARING IN THE PROCESS OF ADOPTION OF LEGISLATION/POLICY

The Assembly of the Republic of Macedonia is the legislative authority with clear powers in the field of adoptions of laws and policy, as well as in the process of exercising control over the operation of the executive authority, i.e. the operation of the

Government and the President of the Republic of Macedonia. The Assembly is the representative body of the citizens of the Republic of Macedonia, whose members are elected at general and direct elections. As such, the Assembly is an authority which should provide for an appropriate quality of legislation, as well as enforcement of an effective control over the operation of the Government and the President as executive authority bodies.

However, in the past years the Assembly has become seriously subordinate to the rule of the Government and hence played a tacit role in the growing imbalance between the executive and the legislative power. The predominant number of legislation has been proposed by the Government or lawmakers who are members of the parliamentary majority.<sup>1</sup> The legislative proposals were largely adopted with a unilateral support of the parliamentarians- members of the ruling political parties, devoid of any essential discussion, and both with little or no discussion, especially in times when the opposition parties did not participate in the work of the Assembly.<sup>2</sup> During the period from October 2014 to April 2015, at a high rate of 69% of monthly rendered speech acts, the

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<sup>1</sup> During the activity of the seventh parliamentary group of the Parliament of the Republic of Macedonia (2011-2014), almost 98% of all laws were proposed by the Government (888 proposals against 19 proposed by the MPs). See: *Report on the activity of the seventh parliamentary group of the Parliament of the Republic of Macedonia*. Parliament of the Republic of Macedonia, page 38, available at the following website: <http://www.sobranie.mk/content/izvestai/2011-2014/Mandaten%20izvestaj%207%20sostav%202011-2014.pdf>

<sup>2</sup> In recent years, on various occasions, the members of Parliament from the opposition parties SDSM and DPA boycotted the work of the Parliament. The parliamentary boycott, in principle, is a commonly used tool by the political parties in Parliament in the Republic of Macedonia. The last long-term boycott was exercised by SDSM in the period from May 2014 to September 2015.

parliamentarians have failed to address the arguments presented by other members of Parliament.<sup>3</sup> The foregoing data indicates very little interaction among members of the Parliament centred on arguments and appreciation of contrasting views, as well as lack of any practice of decision and policy making based on a rational evaluation of the advantages and disadvantages of various public policy options.

Similarly, the Macedonian public in its entirety has conveyed a negative observation on the capacity of the Assembly to exercise control over the operations of the Government. According to the public opinion survey conducted by the IDSCS in June 2015, as high as one fourth of the citizens consider the Assembly to lack control over the operation of the Government, whereas another quarter considers the control exercised to be of a smaller scope. In parallel, almost one third of the respondents consider the control exercised by the Government over the Assembly to be sizable.<sup>4</sup>

One of the key factors for an effective implementation of the prerogatives of the Assembly in both adoption of decisions following legal proposals and the control over the executive authority, is the ability of the members of Parliament from all political parties to freely debate on raised issues. As this policy brief intends to indicate, the space for rendering effective debates has been significantly confined in recent years, largely

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<sup>3</sup> See: *Ninth Report from the Monitoring of the Quality of Debate in Parliament*. IDSCS, April 2015, page 10-11, available at: <http://idscs.org.mk/images/parliament-watchdog/Deveti-izvestaj-od-monitoring-na-Sobranie-mk.pdf>

<sup>4</sup> See: *Public Survey on the Activity of Parliament*. IDSCS, June 2014, pages 6-7, available at: [http://idscs.org.mk/images/parliament-watchdog/Sobraniето\\_pod\\_lupa-Vtora\\_terenska\\_anketa\\_za\\_rabotata\\_na\\_Sobraniето.pdf](http://idscs.org.mk/images/parliament-watchdog/Sobraniето_pod_lupa-Vtora_terenska_anketa_za_rabotata_na_Sobraniето.pdf)

due to the unilateral regulation of this area by the parliamentary majority.

**FROM DEREGULATION TO FULL REGULATION: AMENDMENTS TO THE RULES OF PROCEDURE BY THE MEANS OF WHICH THE FREEDOM OF SPEECH IS RESTRICTED 2008-2013**

By means of various amendments to the Rules of Procedures over the years (2008, 2010 and 2013) the Assembly of the Republic of Macedonia has established its own rules thereby restricting the act of speech for different actors as follows: members of Parliament, coordinators of the parliamentary groups, governmental representatives or officials who propose legal acts or resolutions. The restrictions refer to the permitted time of speech acts during plenary and committee deliberations along the different procedures in the domain of the legislature, as well as multiple opportunities for discussion within a single procedure. Preceding the Rules of Procedure adopted in 2008<sup>5</sup> and according to the Rules of Procedure from 2002<sup>6</sup>, the Assembly has not witnessed any mandatory restriction of discussions. Today, according to the latest procedural amendments from 2013<sup>7</sup>, such restrictions are continuously applied during plenary and commission meetings.

In 2008, the newly adopted Rules of Procedure institutionalized the previously optional right to restrict the discussion during plenary sessions<sup>8</sup> into a “binding rule” thereby

limiting the discussion following agenda items to 10 minutes for the members of Parliament and 15 minutes for the representatives of the Government one-off, and a 15-minute cumulative address on several occasions for the coordinators of the parliamentary groups or the deputies thereof and the proponents of legal amendments. The registration to take the floor, which was allowed throughout the entire debate pursuant to the Rules of Procedure from 2002, has been restricted to one minute upon opening of debate.

Furthermore, the same Rules of Procedure sets forth the restrictions in the procedure for adoption of the national Budget and the procedure/motion for “vote of confidence” of the Government, as well as in the procedures referring to parliamentary questions. Namely, the discussion on the national budget from 2008 onwards has been limited to three days (according to the Rules of Procedure from 2013, the discussion has been extended to five days), thereby one Member of Parliament may speak repeatedly a maximum of 20 minutes, whereas the coordinator of the parliamentary group or a deputy thereof may render a 30 minutes’ speech. In the procedure for rendering a vote of confidence of the Government, the discussion has been limited for the proponents of the procedure to 30 minutes, whereas for the members of Parliament to a total of 15 minutes recurrently, and for the coordinators of the parliamentary

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<sup>5</sup> *Rules of Procedure of the Parliament of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, no. 91/2008

<sup>6</sup> *Rules of Procedure of the Parliament of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, no. 60/2002

<sup>7</sup> *Rules on amending the Rules of Procedure of the Parliament of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, no. 23/2013

<sup>8</sup> According to the provisions of the Rules of Procedure of 2002, the restrictions in terms of duration of speech acts during one debate are

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introduced with a special decision as follows: “ Following a motion by the Chairperson or a Member of Parliament, supported by at least ten parliamentarians, and at the start of the debate on a specific issue, the Assembly may decide to restrict the address of the parliamentarian so as to deliver only one speech in duration of ten minutes, the coordinator of the parliamentarian group and the proponent of act or document in duration of 15 minutes”. (Article 83, *Rules of Procedure of the Assembly of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, no. 60/2002)

groups or deputies thereof a total of 20 minutes.

In 2002, the Rules of Procedure allowed for up to three questions by a single Member of Parliament, and a consecutive elaboration for each within a 10 minute frame, whereas the Rules of Procedure from 2008 again allow for three questions, however the total time allowed for elaboration is restricted to 10 minutes. Similarly, the so-called “additional issue” according to the 2008 amendments has been reduced from ten to three minutes.

The Rules of Procedure from 2013 introduce additional restrictions in the duration of the discussions of the sessions of the working bodies as well as in the procedure amending the Constitution (unprecedented restrictions). Hence, in the committees, the members of the working bodies and the members of Parliament are permitted a total of 20 minutes’ speech on one debate, the coordinators of the parliamentary groups or deputies thereof have a maximum of 30 minutes, whereas the proponents and Government officials up to 15 minutes. The entire debate within a working body in the procedure for adoption of the national Budget may carry on up to 10 days, allowing for an address to be rendered during the debate by the members of the working bodies and the members of Parliament in duration of up to 20 minutes recurrently, and by the coordinators of the parliamentary groups or deputies thereof in duration of up to 30 minutes. During the debate on amendments in the procedure for adoption of the national Budget, the member of the working body may speak once, of up to 10 minutes, the coordinator of the parliamentary group or deputy thereof -up to 15 minutes, whereas the proponent may render a recurrent address of a total of 10 minutes.

The procedure for amending the Constitution from 2013 may take up to 10 days, wherein the members of Parliament may speak recurrently for a total of 20 minutes, and coordinators of the parliamentary groups or their deputies and proponents may speak for a total of 30 minutes (applicable during plenary sessions). During the debate on amendments, a parliamentarian may address only once, in duration of 10 minutes, the coordinator of a parliamentary group or deputy thereof – 15 minutes, whereas the proponent may speak recurrently for a total of 10 minutes.

The forgoing amendments perceive the intention to firmly and vehemently regulate the duration and frequency of the acts of speech, which from 2013 has become absolute and inclusive of almost all processes within the competencies of the legislature such as: debate on items of the agenda, deciding the agenda, registering to take the floor, reply and reply to a reply, procedures wherein the Assembly plays the role of a controlling mechanism to the executive authority (interpellation, parliamentary questions, vote of confidence of the Government, responsibility of the President). Such intention has been rounded up by enhancement of the scope of established restrictions during the sessions of the parliamentary working bodies.

The extensive regulation of the acts of speech largely dispenses with the need for consensus among the various political actors and limits interaction between parliamentarians. The adoption of decisions is reduced to the exclusive will of the parliamentarian majority, whereas the control of the Assembly over the executive branch is disrupted. Additionally, the current rules disincentivise the inter-partisan democracy, producing rather significantly more options for the coordinators of the parliamentary groups than for the parliamentarians to participate in the parliamentary discussion. All of the above

stated gravely restricts the potential of the legislature to adopt qualitative laws and decisions as well as to participate effectively in the system of separation of powers.

### UNILATERAL ACTION? POLITICAL DYNAMICS OF PROCEDURAL CHANGES 2008-2013

The amendments to the Rules of Procedure in 2008 and 2013 including the restrictions of acts of speech were adopted in absence of the major opposition parties in the Assembly and in absence of a consensus reached on the amendments. In the first case, the adoption of the Rules of Procedure in 2008 was carried out under direct pressure of the executive authority (the Government and the Prime Minister), who criticized the Assembly to be inefficient in operations. The length of the procedure for adoption of legislation was identified as the obvious culprit to the implementation of the Governmental policies and programs, and the very parliamentary majority rushed to vote multiple legislation in a “shortened procedure” during the period in which the parliamentarians from the opposition parties were boycotting the activity of the Assembly.

In 2013, the parliamentary majority, directly encouraged by the recent experience of “filibustering”<sup>9</sup> by the political opponents, in two occasions replied with yet another set of new procedural amendments intended for the previously unregulated acts of speech in the parliamentary working bodies. The hindrance and cul-de-sac of discussion occurred in two separate events in 2012, i.e. during the adoption of the national Budget by the end of 2012

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<sup>9</sup> Political delaying tactics (filibustering) is a method according to which the discussion on specific issues in the Assembly is delayed to a level of obstruction/prevention of the passage (or voting) of legislation. Filibustering has been used and accepted in numerous parliamentary traditions across the world.

(events leading towards the “Black Monday”, 24 May 2012) and during the debate on the so-called “Defenders’ Law” from 2012, in the event of which the governing DUI proposed a number of amendments and successfully prevented the passage of the bill by blocking the parliamentary discussion. Thereafter, the Rules of Procedure was adopted following a short discussion without a single amendment filed by the attending parliamentarians.

As well as in 2008, the amendments in 2013 too were passed in the absence of the major opposition party SDSM and with the unilateral consent among the political parties of the ruling coalition. In both cases, the adoption of the procedural amendments was criticized outside the Parliamentary stand by representatives and members of the parliamentary group of SDSM, more as regards to the manner of adoption rather than the content of the proposed amendments.

The amendments to the Rules of Procedure of 2010<sup>10</sup> were adopted notwithstanding the excluding practices, and was supported by the major governing and opposition parties, even though a full consensus was not reached by all parliamentary parties (“the smaller in size” LDP and Nova Demokratija voted against). Even though support was secured by the majority of the political parties, in this case the procedural amendments were passed devoid of wide, inclusive and fundamental discussion. In the public appearances, the parliamentarians and representatives of the coalition of the opposition party SDSM justified their “yes” vote more as an offered support to the Macedonian accession process to the European Union rather than offering substantive discussion on the procedural changes.

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<sup>10</sup> *Rules of Procedure amending the Rules of Procedure of the Assembly of the Republic of Macedonia. Official Gazette of the Republic of Macedonia no. 119/2010*

Taking into account the overall political dynamics, it can be concluded that the three cases fail to offer fundamental discussion on the procedural amendments so as to integrate the opinions and expectations of the parliamentary groups and political parties, as well as of the representatives of the civil society and the experts. Instead, the amendments are largely a product of the needs of the parliamentary majority that often comes across as the extended arm of the Government during parliamentary discussions.

## COMPARATIVE EXPERIENCES FROM THE SLOVENIAN ASSEMBLY

Contrary to the adopted practices and the procedural resolutions under which the Assembly of the Republic of Macedonia operates, the Assembly of the Republic of Slovenia (Državni Zbor Republike Slovenije) operates under significantly more enabling rules as regards to the restriction of the discussion. According to the Rules of Procedure of the Assembly of the Republic of Slovenia<sup>11</sup>, the time for discussion on each item on the agenda is relative and determined in agreement with the Council of the Chairperson of the Assembly, the Vice-Chairperson, the coordinators of the parliamentary groups and the parliamentarians of the ethnic minorities). Accordingly, one parliamentarian individual speech may not be shorter than five minutes, and the coordinator of a parliamentary group may not speak less than ten minutes, unless the Council has decided otherwise pursuant to the views of all coordinators of the parliamentary groups. Additionally, if a parliamentary group disagrees on adopted time for discussion, may ask to be exempt so as to multiply the allowed time of five minutes with the number of members of the parliamentary group (taking into consideration that the overall time for

discussion allocated to the respective parliamentary group shall not be shorter than 20 and longer than 90 minutes). The afore-said time shall be doubled for the discussion on the national budget, the amendments and modifications of the Budget as well as for the process of interpellation.

Once more, contrary to the adopted practices of the Macedonian Assembly, no restrictions as to the frequency of individual speeches is envisaged, even though an option exist to restrict only one speech by a Member of Parliament following a decision of the Assembly, and following a motion by the Chairperson or a parliamentarian. Additionally, the debate on an item from the agenda may be extended to one hour.

The registration for taking the floor and to discuss items on the agenda is feasible upon exhausting the discussion, while the Chairperson is responsible to ask if a parliamentarian would like to take the floor, provided that the time for debate determined by the Council has not expired. The parliamentarians may elaborate their vote prior to each voting in duration of two minutes, while the coordinators of the parliamentary groups may do so in three minutes' time.

The same rules apply to the discussion in the working groups.

## KEY WEAKNESSES IN THE PRESENT RULES OF PROCEDURE RESTRICTING DISCUSSION

The present rules, as stipulated in the Rules of Procedure from 2013, generate more weaknesses which directly affect the quality of discussion and adopted legislation as well as the opportunity for the Assembly to effectively operate as a controlling mechanism of the activity of the Government. The key weaknesses are as follows:

<sup>11</sup> *Uradno prečiščeno besedilo Poslovnika Državnega zbora*. Uradni list Republike Slovenije, 92/07

1. The present provisions directly subordinate the activity of the Assembly to the will of the majority, which by rule acts in defence of the proposals submitted by the Government. The possibility for “filibustering” is almost non-existent, whereas the majority may produce legislation in an “ad-hoc” manner, and fail to take into account the views of the parliamentary minority (i.e. the opposition). The rules directly hamper the political dialogue and render the idea of a compromise among the diverse political views redundant. The afore-mentioned affects the principle of separation of powers thereby disrupting it in favour of the executive authority as the major “manufacturer” of legislation.
2. The rule of “only one speech” for an item of the agenda impedes interaction among the parliamentarians which is greatly underdeveloped. The single opportunity for an interaction is the form of “reply” and “reply to a reply” which by rule may be applied to clarify the views of the speakers, however are short in duration and disable presentation of greater ideas and arguments.
3. The coordinators of the parliamentary groups, in almost all procedures have greater opportunity to engage in discussion as well as interact therein (greater opportunities for multiple addresses and more time for discussion). Such practice is logical taking into account the fact that the coordinators are in a position to channel and articulate the views of the parliamentary groups. However, according to the rules at present, no huge discrepancy exists between the opportunities provided for the coordinator and the Member of Parliament, or the member of the caucus. In a political context, according to which the political parties are sternly centralized and the parliamentarians fail to appear before the audience with diverging views within their own groups, solutions are generated, which contribute to further centralization and are detriment to the quality of debate, as well as to the quality of the legislation adopted.
4. Finally, the present procedural rules have been adopted by lacking consensus of the parliamentarian actors and mainly serve the needs of the parties comprising the parliamentarian majority and the Government. Especially in the aspect of restriction of speech, a consensus is required as to the rules of the game which will enable equal positioning of parliamentarians of diverging political provenances.

#### TOWARDS GREATER QUALITY OF DEBATE: RECOMMENDATIONS AND GUIDELINES FOR IMPROVEMENT OF THE PROCEDURAL PROVISIONS

In relation to the identified weaknesses, this public policy brief proposes several recommendations for improvement of the procedural provisions, in terms of facilitating equality in discussion and safeguarding the parliamentarian minority from the potency of the parliamentarian majority. Lastly, such recommendations would aim to reinforce the potential of the Assembly to exercise control over the operation of the Government as well as the potential to control legislation which is unilaterally adopted by the Government and the members of Parliament from the parliamentarian majority. In defining the

recommendations, the experiences from the Assembly in the Republic of Slovenia have been taken into consideration.

1. **The Rules of Procedure should be amended in a way so as to establish a general consensus of restrictions in the duration of speech acts and other restrictions of the acts of speech and the overall discussion.**

In respect to the afore stated, the provisions of the Rules of Procedure from 2002 need to be reinstated whereby the restrictions are optional and are subject to the consent of different parliamentary groups. The model used by the Slovenian Assembly can be taken as a positive experience which assumes a general agreement within the Council of the Chairperson of the Parliament wherein all parliamentary groups participate, as well as the opportunity provided for exemption of a particular parliamentary group in cases of disagreement. In such a way restrictions shall be applicable for discussions in which the consensus is easily reached, and inapplicable in situations in which the consensus is longer sought for. Additionally, the parliamentary group particularly affected by an issue would be able to utilize the instrument of “exemption” in order to elaborate their arguments at length.

2. **The restriction according to the rule of “one speech” for an item of the agenda for the parliamentarians over multiple procedures should be abolished and replaced by the option to take the floor recurrently within a single debate.** Such a provision would increase the interaction among parliamentarians, which is currently provided only

through the instruments of “reply” and “reply to a reply”, and thus would facilitate the exchange of arguments and opinions on various topics of discussion. Finally, the aforementioned modifications would allow for adoption of a more qualitative legislation.

3. **The method of registration to take the floor during the plenary sessions should be reformed so as to enable registration upon expiry of the first minute of debate.** Such a provision would enable greater interaction among the parliamentarians, but would also allow for introduction of new aspects which would arise from the very discussion. Therefore, the search for a compromise on issues of discussion would be facilitated in future, as a result of the new discoveries which would have sprung from the discussion.
4. Taking into account that according to comparative practices the views among political opponents are best reconciled and crystallized in the early stages of adoption of legislation, i.e. during the activity of the working bodies (committees), **the latest restrictions concerning the committee debates introduced in 2013 should be revised.** This time, the restrictions should be subject to a general consensus among the parliamentary groups and the parliamentary political parties.
5. **The opportunities for “filibustering” should be clearly stipulated in special procedures, thus options would be provided for the application of such a practice (taking into account the comparative practice), however, laid down so as not to account for a complete blockage of the operation**



- of the Assembly.** This issue also needs to be a subject of consensus between the parliamentary groups and parties, which would provide for equally applicable rules for all actors of the Assembly.
6. **Restrictions applicable to the parliamentarians and coordinators of parliamentary groups should be more evenly balanced so as to cultivate diverging views within the parliamentary groups.** In the short run, such provision would open up opportunities for diminishment of the centralization of ideas and arguments within the parliamentary groups, and in the long run would contribute to the development of an inter-partisan democracy.
  7. In addition, **restrictions on government officials must be more extensive in comparison to the restrictions posed on the lawmakers.** The purpose would be to incite greater control of the Assembly over the operation of the Government, and vice-versa, to lessen the possibility of the Government to affect the operation of the Assembly.
  8. With regard to the parliamentary questions, the discussion must be encouraged rather than restricted. In that sense, it is **necessary to increase the time required to pose the parliamentary question,** as stipulated in the provisions of the Rules of Procedure from 2002, when a question was "worthwhile" a 10-minute's discussion. Subsequently, the interaction between the parliamentarians and the government officials will increase, in order for the Assembly to establish a more effective control over the work of the Government.

The application of the afore-stated recommendations would reduce "constraints" obstructing the parliamentary debate as a result of which the quality of legislation and the opportunities for the Assembly to act as the controlling mechanisms over the operation of the executive authority would improve. The parliamentary debate remains a pertinent and necessary element that encourages these key functions of the Assembly of the Republic of Macedonia.