A Grand National Assembly or Grand Bulgarian Chicanery?

Boyko Borissov's proposal for a new Constitution

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Autocrats have a bag of tricks to control and appease the masses. Bulgaria's Prime Minister Boyko Borissov plans to pull a long-forgotten constitutional trick out of his bag — the grand national assembly.

The physical raid against Bulgaria's Presidency by the Prosecutor's Office in July 2020 and the arrests of two of the President's associates were the last drops in a sea of discontent which motivated many Bulgarians to protest and demand the immediate resignation of both Borissov's third government and controversial General Prosecutor Ivan Geshev.

First, Borissov played nonchalant but after he saw protests were not near to calming down, he proposed a cabinet reshuffle which had the perverse effect of making citizens angrier. His latest attempt to soothe the discontent is a proposal for a new Constitution which would have to be enacted by a grand national assembly. As explained below, this proposal lacks merit. In reality, Borissov is just buying time and standing in the way of fair elections by abusing the concept of grand national assembly.

How Grand is a Grand National Assembly?

The grand national assembly is a legal concept charged with historic symbolism for Bulgarians. A short historical overview is necessary to shed better light on Borissov's ulterior motives. The Treaty of Berlin of 1878, signed in the aftermath of the Russo-Turkish War of 1877-1878, redesigned the map of the Balkan Peninsula and paved the way to Bulgaria's autonomy and subsequent independence. Until then, Bulgaria was a mere territory of the Ottoman Empire. The first paragraph of Article IV of this treaty stipulates: 'An Assembly of Notables of Bulgaria, convoked at Tirnovo, shall, before the election of the Prince, draw up the Organic Law of the Principality.' This Assembly of Notables is recognized as the First Grand National Assembly of Bulgaria and the Organic Law it drafted is Bulgaria's first Constitution, known as the Turnovo Constitution of 1879. The Turnovo Constitution itself distinguishes between an ordinary national assembly and a grand national assembly. The difference between these two types of parliament was substantial for the latter had exclusive competences, such as the prerogative to modify the Constitution. To spare confusion, a further digression is necessary: the Great Powers insisted that Bulgaria be a monarchy and that the Prince be elected by the population and confirmed with their assent (Article III of the Treaty of Berlin).

Bulgaria's communist Constitutions abandoned the dichotomy between a grand and an ordinary national assembly. However, post-1989, at Bulgaria's Round Table (January-May 1990), it was suggested that it be necessary to have a grand national assembly which would work on a new democratic Constitution. Not without manipulations and falsifications, the elections for this grand national assembly were won by Bulgaria's Communist Party which had revamped itself as Bulgaria's Socialist Party. That is why, Bulgaria's current Constitution enacted in 1991 was perceived as disappointing from the moment of its drafting — 39 members of this Seventh Grand National Assembly even went on hunger strike and there were protests in their support.

The current Constitution of 1991 also distinguishes between an ordinary and a grand national assembly. Article 158 specifies the exclusive competences of such grand assembly, including the privilege

to enact a new Constitution, to change the country's political system, to alter some specific provisions in the Constitution, to modify the modalities for amending the Constitution, etc. It should be noted that such a grand national assembly is not required for most constitutional amendments. Also, a grand national assembly does not have a set term — it dissolves once it resolves the questions it was elected for. It cannot exist in parallel to an ordinary national assembly. It deals primarily with the constitutional matters it was elected to examine and can fulfill the function of an ordinary national assembly only for urgent matters (Article 162 of the current Constitution).

This binary system of parliaments, as we currently know it, has a dual purpose: 1) symbolism: it pays due respects to Bulgaria's constitutional tradition born in Turnovo; 2) legal certainty: it makes radical changes in the Constitution more difficult.

Clear Demands

Before delving into Borissov's alleged proposal, it is worth mentioning that those protesting have very clear demands for the short and medium run. They ask for the resignation of Borissov's third government and General Prosecutor Ivan Geshev, early parliamentary elections organized by a caretaker government appointed by the current President Rumen Radev, and subsequent law reforms designed to tackle Bulgaria's long-standing challenges in the area of rule of law and to ensure fairer elections.

On the rule of law end, the presence of an omnipotent Prosecutor's Office with a vertical structure with no checks and balances which is used to whitewash corrupt politicians and to harass opponents of the government is the traditional subject of concern. Bulgaria has been playing a 10 year cat-and-mouse game with the Council of Europe and the Venice Commission resisting to reform the Soviet model of this institution. In fact, as explained above, it was the arbitrary action against the current President who is an opponent of Borissov by this Prosecutor's Office which triggered the protests taking place at the moment. A second major problem is the current set up of the Supreme Judicial Council — the body responsible for the election, appointment and promotion of all magistrates which is traditionally dominated by the Prosecutor's Office and politics. Borissov's regime also established a parallel system of courts which have many of the features of extraordinary tribunals. They are dominated by the Prosecutor's Office and are far from ensuring fair trials.

On the election law end, Borissov has been resisting the introduction of distance voting, electronic voting, and machine voting for years. Official statistics show that there are more Bulgarians working abroad than in Bulgaria which makes it difficult for nearly 2.5 million Bulgarians to vote (the population of Bulgaria is barely 7 million).

At this stage, Borissov fears a caretaker government appointed by Radev because this would increase the chances of fairer elections taking place. If the elections are organized by a caretaker government, Borissov would have less control over the process. Meanwhile, Borissov's current approval rating is 20% while public disapproval of him is 68%, so there is a distinct possibility that he will lose power for good.

A Proposal Lacking Grandeur

To avoid early elections organized by a caretaker government appointed by Radev at any cost, Borissov engaged in cheap populism. He gave fiery speeches (his address to the nation can be found here; the Facebook briefing of his Council of Ministers can be found here) in which he argued that while he had achieved a lot for Bulgaria, he listened to people and he was ready to ensure the constitutional reform they wanted. He announced that his GERB party would put forward a proposal for the convocation of a grand national assembly which would debate and enact a new Constitution. The draft was ready and was 37 pages long. It also emerged that it was written in the past month.

The announcement that a new Constitution can be written in one month may already raise the eyebrows of constitutional lawyers. Furthermore, those protesting want a constitutional reform without Borissov in it — the legitimacy of a Prime Minister benefiting form 68% disapproval to talk about reforms

can also be doubted. Yet, the problems with this draft do not end here, as the proposal does not address any of the substantive concerns of those protesting. Also, all concerns regarding the constitutional challenges hampering the promotion of the rule of law in Bulgaria may be resolved by an ordinary national assembly.

Those familiar with Bulgaria's current Constitution may experience a déjà-vu and this would not be accidental — journalists ran the draft through plagiarism software and established that nearly 90% of this new proposal is identical to Bulgaria's current Constitution. In other words, one can hardly talk of a new Constitution.

Even further, the perceived amendments to the current Constitution have questionable value. Some of the amendments are of a populist nature — the number of Members of Parliament is decreased from 240 to 120. Some appear to have malign underlying logic — the proposal abandons the distinction between an ordinary and a grand national assembly, thus allowing any national assembly in the future to enact a new Constitution, change the political system, etc.

Some amendments overtly exacerbate the country's long-standing challenges in the area of rule of law. Not only the proposal does not do anything to introduce checks and balances in the Prosecutor's Office, but it increases their already excessive powers. The proposal envisages that the two current colleges (judicial and prosecutorial) of the Supreme Judicial Council acquire the status of separate councils and gives both of them the right to legislative initiative. When confronted about this legislative choice, Ekaterina Zaharieva, Vice Prime Minister whose portfolio includes overseeing law reform, provided an explanation which was far from convincing — she said that prosecutors often criticized the laws for being imperfect, so this was a way to solve this issue. Unfortunately, for 10 years, Borissov's GERB avoided subjecting Bills to public debate and opening calls for evidence, which is a standard democratic mechanism for ensuring better legislative quality. Turning prosecutors or judges into legislators delivers a blow to parliamentarism and the separation of powers and cannot be a viable mechanism for solving problems with drafting.

Some amendments are purely formalistic but leave a bitter taste, too. Chapter 2 dedicated to Fundamental Rights has been moved at the very end of the Constitution as Chapter 9. The preamble of the current Constitution, which states that the supreme principle governing Bulgaria is human rights, people's dignity and security, has been removed in its entirety.

Finally, many Bulgarians were shocked by the grammar and spelling mistakes riddling the new additions as well as the fact that the proposal does not describe Bulgaria's coat of arms correctly. Considering the marketing efforts put by Borissov and his GERB party to promote this proposal and to showcase how much they care for people's will to be heard, such lack of attention to detail only shows the proposal was written in a rush with a completely different purpose.

A Grandiose Fiasco or an Odious Danger?

They say that every cloud has a silver lining. The silver lining here is that more people will understand how seriously Borissov and his GERB party take constitutionalism and the rule of law. In addition, not all seems lost for there are some procedural details which may hamper Borissov's plans for a grand national assembly. Pursuant to Article 159(1) of the current Constitution, only the President or one-half of the members of an ordinary national assembly benefit from the right to propose the convocation of a grand national assembly. According to Article 160(1) of the current Constitution, two-thirds of the members of an ordinary national assembly should vote in favor of organizing elections for a grand national assembly for such elections to take place.

Borissov may manage to gather 120+ signatures to introduce his Bill, but he needs 160 votes to ensure that the grand national assembly card is viable. He is as cunning as a fox and his behind-the-curtain alliances with political parties which are not part of his governing coalition are well-known. If he gathers these votes, his ties and unhealthy dependencies will be further exposed but his plan to abuse the concept of a grand national assembly will materialize, too. Propos-

ing a grand national assembly to debate a draft without merit is a smokescreen for Borissov's fear of fair elections and a kick in the teeth of constitutionalism.

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