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# Tacit Agreements in the Bulgarian Transition to Democracy: Minority Rights and Constitutionalism

*Rumyana Kolarova<sup>†</sup>*

Until 1990, social scientists widely accepted that “the only form of constitutional arrangements which socialist states have taken seriously since 1917, are formulas for national federation and autonomy.”<sup>1</sup> The dramatic changes in Eastern Europe give indisputable evidence that during post-totalitarian transitions, the federative forms of constitutional arrangements are the most vulnerable to challenges. The devolution of the socialist federative state could be described as a replacement of the dismantled “prisonhouses of nations” by “provincial or county goals of minorities.”<sup>2</sup> In former federations such as Yugoslavia, the Soviet Union, and Czechoslovakia, the issue of minority rights was provoked by the changes in the constitutional provisions that regulated the governmental system/structure, sovereignty and territory of the state.

That was not the case in Bulgaria. Introducing a national federation, or any other kind of autonomy, was never regarded by the communist regime as a possible solution to the problems of the Turkish ethnic minority. On the contrary, the Bulgarian communist regime targeted the Turkish minority for its most recent and violent acts of repression, an approach that was quite unusual in the context of Eastern Europe with one noticeable exception, Romania. In both Bulgaria and Romania, the communist regimes tried to assure wider public support by promoting a nationalistic policy and a campaign for ethnic assimilation. In Bulgaria, post-totalitarian changes in the constitutional provi-

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<sup>1</sup> Eric J. Hobsbawm, *Nations and Nationalism Since 1780* 172 (Cambridge, 1992).

<sup>2</sup> This is a metaphor used by Ernst Gellner when analyzing the dismantling of empires and the establishment of nation states within their boundaries. Ernst A. Gellner, *L'avvento del nazionalismo, e la sua interpretazione. I miti della nazione e della classe*, in Perry Anderson, ed, *Storia d'Europa* 24 (Einaudi, forthcoming 1994) (all citations are to Gellner's English manuscript on file with the U Chi L Sch Roundtable).

sions regulating human rights became the most pressing and indispensable issue. These changes were a kind of “litmus test” for the transition from authoritarian to democratic governance and determined the key role that the Turkish minority’s political organization—the Movement for Rights and Freedoms (“MRF”)—was to play in the process of democratization.

## I. INTRODUCTION: BULGARIAN TRANSITIONS TO DEMOCRACY

Constitutional provisions of a post-communist state can serve a dual purpose during the process of democratization. On the one hand, these provisions help to introduce deprived minorities into the political process and serve as a guarantee against future violation of minority rights. On the other hand, these provisions also protect the incumbent elites from acts of retributive justice initiated by potential anti-communist majorities and serve to stabilize the entire transition against “revolutionary violence.”

As a rule, in post-communist states, the public is irreconcilably divided along ethnic/religious and pro-communist/anti-communist lines. These two dominant cleavages seem to produce both “dangerous minorities” and “dangerous majorities.” Under such conditions, the failure to carefully protect the rights of minority groups greatly jeopardizes the integrity of the state and the stability of the democratization process. During periods of peaceful transition, state authorities are unavoidably weakened. In these circumstances, minority ethnic groups and groups comprised of incumbent party elites are potentially very disruptive for two simple reasons. First, if the constitution-making process is delayed or blocked and the rights of these two groups are not constitutionally guaranteed, their members can be easily mobilized, either for violent collective actions or for opposing change by taking control of the coercive state apparatus. Second, if constitutional guarantees for minority rights are quickly and easily given, this may provoke the consolidation of radical nationalistic or anti-communist majorities. Such majority power could provoke the reemergence of the authoritarian regime.

### A. Strategies for Transition to Democracy

In the Bulgarian transition to democracy, two strategies for managing the “dangerous minorities/majorities” issue have proven successful: first, gag rules combined with tacit agreements; and second, democratic recalcitrance.

The strategy of omission through gag rules<sup>3</sup> and tacit agreements can secure the stability of the transition to democracy. By implementing gag rules and reaching tacit agreements with certain political actors, the majority can remove some issues of special concern to the minority from public debate. This strategy institutionalizes uncertainty not through bargaining on constitutional and legislative texts, which introduces universal standards and impartial rules, but through judicial review and discretionary interpretation of open-ended constitutional texts. This puts the minority in a dependent and uncertain position.

Minority "democratic recalcitrants"<sup>4</sup> refuse to play according to established rules, thereby seeking to discredit the moves of the majority in the eyes of the national and international public. For example, the minority may resort to mass public demonstrations to undermine the majority position rather than attempt to resolve an issue through parliamentary negotiations. This strategy of questioning the legitimacy of the majority puts the majority in an uncertain position and practically forces it to make concessions to the minority in order to gain credibility. This strategy is effective only if the majority is committed to the process of democratization and/or a system of democratic participation has already been introduced.

## B. Conditions for Transition Strategies

The strategies of gag rules and democratic recalcitrance have been defined and discussed in texts which offer general models of constitution-making and transitions to democracy.<sup>5</sup> This study is not aimed at comparative analysis and generalizations, but at examining the specific conditions under which such strategies have proven desirable and effective for the main political agents. This study will evaluate two conditions under which these strategies have been successful—impossible bargaining and uncertainty.

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<sup>3</sup> Stephen Holmes, *Gag Rules or the Politics of Omission* in Jon Elster and Rune Slagstad, eds, *Constitutionalism and Democracy* 19, 27-31 (Cambridge, 1988).

<sup>4</sup> Guillermo O'Donnell and Philippe Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions About Uncertain Democracies* 71 (Johns Hopkins, 1986).

<sup>5</sup> See Holmes, *Gag Rules* at 27-31 (cited in note 3); O'Donnell and Schmitter, *Transitions from Authoritarian Rule* at 71 (cited in note 4).

### 1. Impossible bargaining.

Although the constitution-making process during the period of transition to democracy is usually described in terms of bargaining, bargaining is sometimes impossible.<sup>6</sup> Both strategies are in fact a kind of substitute for parliamentary bargaining. The parties involved in the constitution-making process opt for these strategies when communication and consensual transactions, according to universal or impartial rules, are viewed as impossible. In such cases, it is essential that the minorities, although stifled by the majority, are not excluded and that the issues of conflict are articulated and at least partially resolved.

Bulgaria is an example of a constitution-making process begun with nationalistic and communist majorities in the Parliament, both legitimized by free elections.<sup>7</sup> The new constitution was framed and signed without real bargaining. Even after the second free elections,<sup>8</sup> when the ex-communists and the nationalists lost their majority in the Parliament, no genuine bargaining occurred. The newly established anti-communist majority preferred to impose decisions within Parliament, and the arguments of the parliamentary minority (i.e. the deputies of the ex-Communist Party) were barely considered. In addition, no productive public bargaining between the coalition partners within the governing majority ensued. Though unavoidable and relatively effective in the beginning, the use of gag rules and democratic recalcitrance gradually became unproductive.

### 2. Launching uncertainty.

Both strategies are effective in dealing with the ethnic minorities issue only if they introduce uncertainty. This second analytical aspect of the strategies of the major political agents in a post-communist state is based on the definition of democracy as "referential uncertainty." Such a framework reveals a political system where the "outcomes of the political process are to some extent indeterminate with regard to positions which participants occupy in all social relations, including . . . political institutions."<sup>9</sup> Yet there are different mechanisms for introducing un-

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<sup>6</sup> Jon Elster, *Constitutionalism in Eastern Europe: An Introduction*, 58 U Chi L Rev 447, 478-80 (1991).

<sup>7</sup> Luan Troxel, *Socialist Persistence in the Bulgarian Elections of 1990-1991*, 26 E Eur Q 407, 411-19 (1992).

<sup>8</sup> Id at 423.

<sup>9</sup> Adam Przeworski, *Democracy as a Contingent Outcome of Conflicts*, in Elster and

certainty corresponding to the different patterns of transition. The strategy of gag rules instills uncertainty in the legitimacy of the minority and the strategy of democratic recalcitrance instills uncertainty in the legitimacy of the majority.

General models of the process of transition from authoritarian rule to democracy pay special attention to the first stage of the transition, the so-called "tutelary democracy", "limited democracy", or "liberalized authoritarianism."<sup>10</sup> This liberalization is defined as a stage at which the authoritarian regime (or incumbent elite) continues to maintain its power to control the political outcomes *ex post*.<sup>11</sup> The Bulgarian process of democratization suggests that if there is a constitution-making process during the liberalization stage, combining the two strategies of omission and recalcitrance is a possible way to launch and institutionalize uncertainty. These strategies can introduce a situation in which irreconcilably divided political parties prefer to limit their political tactics and goals and comply with relatively unfavorable outcomes.

Analysts of democratic transitions tend to underestimate the liberalization stage, arguing that no democratic constitution can be adopted before the main political parties become bargaining partners.<sup>12</sup> Bulgaria gives another perspective to the issue of constitutional longevity, suggesting that democratic norms can be adopted and respected not only through bargaining (consociational transactions), but also through mutual questioning of each other's legitimacy.<sup>13</sup>

The following analysis of Bulgaria's transition to democracy follows the chronology of events during the period 1989-1992,

Slagstad, eds, *Constitutionalism and Democracy* 59, 61 (cited in note 3).

<sup>10</sup> The second stage is called "real democratization." See O'Donnell and Schmitter, *Transitions from Authoritarian Rule* at 6-14 (cited in note 4).

<sup>11</sup> A detailed definition of liberalization is as follows: "a situation or, when it involves a series of steps, a process of instituting civil liberties, most importantly the right of autonomous associations, and of allowing or even creating some political organizations through which conflicts can be processed in an open fashion, but without transforming the power apparatus and undermining its capacity to control outcomes *ex post*." See Przeworski, *Democracy as a Contingent Outcome of Conflicts* at 61 (cited in note 9).

<sup>12</sup> However, Przeworski argues that bargaining alone is not a sufficient condition for the introduction of impartial rule. See Adam Przeworski, *Democracy and the Market* 79-88 (Cambridge, 1991).

<sup>13</sup> The gag rules and tacit agreements strategy questions the legal legitimacy of the minority. Holmes, *Gag Rules* at 46-47 (cited in note 3). The democratic recalcitrance strategy questions the legitimacy of the majority in the sense of public support and compliance with universal democratic standards. O'Donnell and Schmitter, *Transitions from Authoritarian Rule* at 71 (cited in note 4).

placing emphasis on the productive and unproductive uses of the two strategies for handling their ethnic minorities issues during two distinctive stages. This paper's analysis of the liberalization stage extends from the beginning of the changes in the regime up to the adoption of a new constitution (November 1989 to Summer 1991). The analysis of the democratization stage covers the period from the second free general elections up to the split in the governing Union of Democratic Forces (UDF)/Movement for Rights and Freedoms (MRF) parliamentary majority (October 1991 to December 1992).

## II. HISTORICAL SETTING OF THE TURKISH MINORITY QUESTION

Since the establishment of a modern Bulgarian state in 1878, the existence of a Turkish minority has traditionally been perceived as a significant threat to its national integrity and sovereignty. This attitude was present in all of the Balkan states that emerged after the disintegration of the Ottoman Empire, especially those bordering Turkey. Mass emigration of ethnic Turks from Bulgaria and reciprocal immigration of ethnic Bulgarians from Turkey was the routine way of establishing nation-state boundaries. Usually, these emigration waves<sup>14</sup> were regulated through agreements between the two neighboring states. Thus, the Turkish ethnic minority problem in Bulgaria was traditionally associated with foreign policy and strongly related to national security. If the issue of minority rights was ever considered, it was viewed in terms of a guaranteed exit option, not in terms of Turkish minority autonomy and representation in governing bodies.

Religious intolerance by the Bulgarian Christians towards the Turkish Muslims increased the ethnic bias against and the oppression of the Turks in Bulgaria. This prejudice was exacerbated further by the significant number of Bulgarian Muslims

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<sup>14</sup> At least three mass emigrations of ethnic Turks from Bulgaria to Turkey were regulated through agreements between the two countries. These took place during the years 1931-41, 1947-51 and 1968-78. Through these agreements, the Bulgarian government kept the number of ethnic Turks in Bulgaria at about 600,000. The Turkish minority population is now concentrated in two major regions of the country, the north-eastern and south-central regions. See Anastas Totev, *Naselenieto na Bulgariia 1880-1980* in 59 *Godishnik na Sofiiskata Universitet Ioridicheski Fakultet* 5, 24-31 (Nauka i Iskuetvo, 1968) (article on the population of Bulgaria from 1880 to 1980); Dimitur Filipov and Sergei Tsvetarski, *Vunshnata migratsiia na naselenieto na Bulgariia* (Fondatsia Svobodna Initsiativa, 1993); Minority Rights Group, ed, *World Directory of Minorities* 125 (St James, 1989).

who inhabited the regions neighboring those inhabited by Turks. Ethnic Bulgarians considered any protection and guarantees of the Muslim religious rights as a precondition for the ethnic assimilation of the Bulgarian Muslims by the Turks.<sup>15</sup>

During the first years of the communist regime in Bulgaria (1948-51), the cultural autonomy of the Turkish minority was fostered through guarantees and subsidization by the state authorities.<sup>16</sup> After this period, however, the government gradually adopted a new policy of ethnic deprivation.<sup>17</sup> Turkish schools, theaters, newspapers, and radio broadcasts first were restricted and then closed down. By 1984, this restrictive government policy developed into a violent ethnic assimilation campaign.<sup>18</sup> The government forced Turks to change their names from Muslim to Christian, banned the use of Turkish language outside the family, and prohibited certain religious practices such as circumcision.<sup>19</sup> Army units enforced the campaign and went so far in several instances as to use gunfire to suppress peaceful Turkish

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<sup>15</sup> Beginning in the 14th century, a continuous history of religious and ethnic assimilation of the Bulgarians by the Turks occurred. This assimilation had both voluntary and coercive or violent elements to it. See Strashimir Dimitrov, *Etnicheski i religiozni protsesi sred bulgarskata narodnost prez XV-XVIII vek*, 3 *Bulgarska Etnografia* 33, 33-34 (1980); Antonina Zheliazhkova, *Rasprostranienieto na isliama v zapadnobalkanskite zemi pod osmanska vlast XV-XVIII vek* 255-62 (BAN, 1990). At least 150,000 ethnic Bulgarians are Muslims and are concentrated in the south-central region of Bulgaria. See *World Directory of Minorities* at 118 (cited in note 14).

<sup>16</sup> During this period, the government adopted a bilateral agreement with Turkey regulating mass emigration from 1948 to 1951. In 1951, the Politburo guaranteed a high degree of religious and cultural autonomy for the Turkish minority under its Decision A No. 103. See Staiko Trifonov, *Strogo Poveritelno*, *Pogled* (Apr 22, 1991).

<sup>17</sup> This change in policy is represented by numerous unpublished acts by the Politburo. The following are representative: 1958 Theses of the Central Committee of BCP regulating the ending of education in the Turkish language and the merging of Turkish and Bulgarian schools; 1960 act restricting the number of religious communities from 500 to 80; 1961 act closing all Turkish schools; 1970 act eliminating the teaching of Turkish in Bulgarian schools; and 1974 act closing down the Department of Turkish at Sofia University. See Staiko Trifonov, *Strogo Poveritelno*, *Pogled* (Apr 22, 1991); Staiko Trifonov, *Strogo Poveritelno*, *Pogled* (Apr 29, 1991); Staiko Trifonov, *Strogo Poveritelno*, *Pogled* (May 6, 1991); Staiko Trifonov, *Strogo Poveritelno*, *Pogled* (May 13, 1991); Staiko Trifonov, *Strogo Poveritelno*, *Pogled* (May 20, 1991).

The changes in the status of the Turkish minority were codified in 1971 when a new constitution was adopted. Until 1971, Turks were recognized as a national minority by the Bulgarian Constitution of 1947 and were entitled to education in their vernacular language under Article 71. See *World Directory of Minorities* at 125, 406 (cited in note 14).

<sup>18</sup> Four of the six Politburo members made the top secret decision to implement a violent assimilation campaign. See Trifonov, *Strogo Poveritelno*, *Pogled* (May 20, 1991) (cited in note 17); Stoian Mikhailov, *Vuzroshdenskiia protses v Bulgariia* 66 ("M8M", 1992).

<sup>19</sup> *World Directory of Minorities* at 126 (cited in note 14).



protests.<sup>20</sup> During the course of the assimilation campaign, the Turks were left without an exit option because the bilateral agreement regulating the immigration to Turkey, signed in 1968, had expired on November 30, 1978.<sup>21</sup>

Over time, this governmental repression consolidated the Turkish community and caused a highly centralized and well coordinated illegal organization to emerge. In 1984 and 1985, the public was surprised by a series of terrorist acts, allegedly organized and committed by Turkish Bulgarians.<sup>22</sup> During the period from 1984 to 1989, several thousand Turks were detained by the Bulgarian government. Approximately 1,000 of those detained were sentenced (five of them were executed for terrorism)<sup>23</sup> and at least a dozen died in clashes with the police and the army.<sup>24</sup>

In May 1989, a mass protest demonstration, carried out under the slogans of Perestroika, was held in the small town of Kaolinovo, located in north-eastern Bulgaria.<sup>25</sup> Within a week, the government expelled roughly 300 suspected activists in the illegal Turkish minority human rights movement to Austria.<sup>26</sup> This event marked the beginning of a massive, and partially government-enforced, emigration of the Turkish minority population across the Bulgarian-Turkish border. Turkey had in the meantime agreed to accept immigrants from Bulgaria. From June through August, more than 300,000 Turks left Bulgaria.<sup>27</sup> Diffuse support for the government's assimilation campaign probably existed among the Bulgarian populace. Some intellectuals, however, protested against the violence. Nevertheless, this period of Turkish flight caused serious conflict between Bulgaria and all the Western democracies, as well as Turkey.<sup>28</sup>

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<sup>20</sup> Id.

<sup>21</sup> Id at 125.

<sup>22</sup> Mikhailov, *Vuzrozhdenskiia protses* at 66 (cited in note 18); Georgi Sotirov, *Turските терористи i az, edin ot shesto* 32-33 (Izdatelska Kushta "Mladezh", 1991).

<sup>23</sup> Sotirov, *Turските терористи* at 32-33 (cited in note 22).

<sup>24</sup> *World Directory of Minorities* at 126 (cited in note 14).

<sup>25</sup> Id at 127.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id. Immediately after the collapse of the authoritarian regime of Todor Zhivkov, over 100,000 Turks returned to Bulgaria. It is important to mention that the demographic makeup of those returning was not the same as those Turks who left Bulgaria. When census figures from 1985 and 1992 are compared it can be assessed that approximately 35% of those leaving, but only 10% of those returning, were below 20 years of age. See Filipov and Tsvetarski, *Vunshnata migratsiia* at 11-16 (cited in note 14); Natsionalen Statisticheski Institut ("National Statistical Institute"), *Vutreshna i vunshna migratsiia na naselenieto v kraj na 90-te godini* at 28-34, 90 (1992).

In summary, directly prior to the beginning of the democratization process in Bulgaria, the Turkish minority was the most severely deprived part of the population, yet it also had become strongly consolidated on ethnic and religious fronts and was easily mobilized through kinship and neighborhood networks. Those who had suffered imprisonment and detention under the communist regime had also become identifiable leaders. However, Turkish minority rights activities were not motivated primarily by any ethnic antagonism or hostility. On the contrary, they were motivated and legitimized by their anti-communist and anti-regime attitudes.

### III. FIRST STAGE—LIBERALIZATION

The liberalization stage in Bulgaria spanned the period from the beginning of the changes in the Communist regime up to the adoption of a new constitution, or roughly from November 1989 to Summer 1991. During this period, the strategies of gag rules and democratic recalcitrance shaped the political debate.

#### A. Liberalization through Gag Rules

This section will explain the lack of public discussions and bargaining on the issues of minority rights and decommunization. The political parties attempted to diffuse these issues by employing gag rules in combination with tacit agreements to handle opposition to unilateral liberalization acts, to manage the pre-constitutional negotiation process, and to control the constitution-making process.

##### 1. Unilateral liberalization acts.

The first unilateral liberalization act of the Communist National Assembly, passed on December 14, 1989, abolished the constitutional articles that banned anti-communist organizations.<sup>29</sup> Shortly afterward, the communist-party reformers decided to recognize and publicly reject the repressive policy that had been directed against the Turkish minority. On December 29, 1989, in accordance with a joint decision issued by the Central Committee of the Communist Party, the Council of Ministers, and the State Council,<sup>30</sup> local officials were obliged to “restore”

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<sup>29</sup> *Narodno Subranie, Zakon za izmenie na Nakazatelnia kodeks*, Durzhaven Vestnik No. 99 (State Gazette) 1, 1 (Dec 22, 1989) (changes in the penal code).

<sup>30</sup> Kiril Kertikov, *The Ethnic Nationality Problem in Bulgaria*, Bulg Q 71, 77 (Spring

the Muslim names of the Turkish and other Muslim minorities.<sup>31</sup> This action caused a mass protest by Bulgarians from ethnically-mixed regions.<sup>32</sup> They called for a national referendum on the issue of names or a moratorium on any action.<sup>33</sup> The protest was organized by local Communist Party activists who had previously been involved in repressive actions.<sup>34</sup> To pacify the protesters, the Communist National Assembly passed a special law introducing a complicated judicial procedure through which Bulgarian citizens with Muslim religious identity could claim their right to an Arabic name.<sup>35</sup>

The Assembly simultaneously passed legislation providing amnesty to all political prisoners and compensation to all those who had been repressed by the communist regime.<sup>36</sup> As a result, Turkish minority movement activists were released from prison, and within four months they were able to establish and legalize an organization called the Movement for Rights and Freedoms (MRF).<sup>37</sup> The MRF demanded legislative changes that would introduce fast and simple administrative procedures for the "restoration" of their names.<sup>38</sup>

1992). After the peaceful ouster of Todor Zhivkov, Secretary General of the Bulgarian Communist Party, the typical authoritarian manner of joint decisions of the supreme party, executive and legislative authorities was preserved until the end of January 1990. At that time, the Round Table Talks ("RTT") were vested with supreme legislative power on a limited number of issues. *Declaration on Round Table Role Status*, Daily Rep E Eur 6, 6 (Mar 15, 1990).

<sup>31</sup> *Narodno Subranie, Deklaratsia na Narodnoto subpanie na Harodna republika Bulgariia po natsionalnia vupros*, Durzhaven Vestnik No. 6 (State Gazette) 3, 3-5 (Jan 19, 1990) (declaration by the National Assembly).

<sup>32</sup> *Ekspress Informatsia 35/90*, ed, *Natsionalnia konflikt i negovotorazvitie sled plenuma na ZK na BKP ot 29.12.1989 godina* (1990); Kertikov, Bulg Q at 77 (cited in note 30).

<sup>33</sup> The nationalist movement proposed an obligatory "name index for Bulgarian citizens", identical to the French requirements for naturalization of immigrants. *Ekspress Informatsia 35/90*, ed, *Natsionalnia konflikt* (cited in note 32); Kertikov, Bulg Q at 77 (cited in note 30).

<sup>34</sup> Kertikov, Bulg Q at 77 (cited in note 30).

<sup>35</sup> The legislative text was based on the presumption that from 1984 to 1985 the Turks had voluntarily changed their names. See *Narodno Subranie, Zakon za imenata na bulgarckite grazhdani*, Durzhaven Vestnik No. 20 (State Gazette) 1, 1-3 (Mar 9, 1990) (law on the names of Bulgarian citizens).

<sup>36</sup> See *Narodno Subranie, Ukaz No. 95*, Durzhaven Vestnik No. 6 (State Gazette) 1, 1-2 (Jan 19, 1990) (National Assembly Decree No. 95).

<sup>37</sup> Kertikov, Bulg Q at 79 (cited in note 30). The group was based on the already existent illegal organizational structures. The organization was registered under the name "Movement for Rights and Freedoms" after the court refused to register it under the name "Movement for Rights and Freedoms of the Turks and Muslims in Bulgaria."

<sup>38</sup> Turks claimed that their names had been changed through administrative coercion.

Once the constitutional articles banning anti-communist organizations were eliminated, a great number of oppositional organizations emerged. A coalition of the major opposition parties formed the Union of Democratic Forces (UDF), but the Turkish organization, the MRF, was never admitted to the UDF as a member.<sup>39</sup>

## 2. Pre-constitutional negotiations.

Pre-constitutional negotiations between Communist Party leaders and UDF leaders were held at the Round Table Talks ("RTT").<sup>40</sup> The MRF, however, was not admitted to participate in these negotiations. Representatives of the Turkish minority were courteously invited to the RTT by both the Bulgarian Communist Party (BCP) and the UDF, but the participation of MRF as an organization was never seriously discussed. The formal reason given for the omission of the MRF from the Talks was that the legal procedure for official registration of the MRF was delayed.<sup>41</sup> As a practical matter, however, neither of the negotiating sides wanted to be associated with a pro-Turkish policy. They feared being labelled as the "betrayers of the national interests" and consequently losing public support.<sup>42</sup>

During the preliminary RTT discussions, the participants had to set conditions under which the UDF would negotiate with Communist Party Reformers during the Talks. One major condition set was that the ethnic-religious minority issue would not be discussed. All participants unanimously decided that an open, public discussion of Turkish minority rights would jeopardize the democratization process by further consolidating and strengthening support for the emerging nationalistic parties.<sup>43</sup>

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*Ekspress Informatsia* 35/90, *Natsionalnia konflikt* (cited in note 32).

<sup>39</sup> The issue was discussed, but the leaders of other human rights organizations already included in the UDF were against it. One of the most violent opponents was Rumen Vodenicharov, who has lately left the opposition and has openly declared his anti-Turkish position. In January 1992, Vodenicharov ran as a candidate for vice-president under a strongly nationalistic program.

<sup>40</sup> The RTT were held from January to May 1990, and, according to their terms, all of the constitutional amendments and legal acts agreed upon by a consensus at these negotiations were automatically passed by the communist National Assembly. However, the RTT acted as a sovereign legislative body *only* on issues concerning the forthcoming general elections. *Declaration on Round Table Role Status*, Daily Rep E Eur at 6 (cited in note 30).

<sup>41</sup> The RTT started in January 1990, but the MRF was not registered until April of the same year.

<sup>42</sup> Troxel, 26 E Eur Q at 414 (cited in note 7).

<sup>43</sup> Meanwhile, three nationalistic parties were founded: the Bulgarian National

The participants also agreed that the culpability of the Communist Party would not be an issue during the negotiations. This agreement was necessary due to the irreconcilable positions of the BCP and the UDF on this issue. Without a prior agreement between the parties, the issue of BCP culpability might be used by either side to block negotiations on other issues. Unlike the ethnic-religious minority problem, the culpability issue was often used by both sides to appeal to the emotions of the public during the negotiations.

The introduction of these gag rules allowed for negotiation between the BCP and UDF on other issues. One of the legislative acts agreed upon at the RTT was the Bill on Political Parties which introduced political rights, including freedom of associations, into Bulgarian society.<sup>44</sup> When the Bill on Political Parties was ready to be finalized, the issue of the MRF's organizational status could no longer be excluded from the agenda, and both the BCP and the UDF found themselves in an awkward position. Neither party wanted to discuss the issue publicly or to openly affirm or reject the right of the Turkish minority to have an autonomous political organization. At the same time, it was clear that if this particular right was not guaranteed, most of the ethnic Turks would refrain from voting, and the forthcoming elections would not be recognized as free and democratic by international observers.

After long consultations with expert groups,<sup>45</sup> the negotiating sides agreed to discuss the Bill on Political Parties in a closed-door RTT session.<sup>46</sup> As a result, a kind of double-standard mechanism was worked out. An explicit ban on the formation of parties based on ethnic or religious identity was included in the

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Radical Party, the Bulgarian National Democratic Party, and the Fatherland Party of Labor. However, perhaps due to the careful policy of the participants at the Round Table Talks, only the third succeeded in getting one representative in the Parliament. Within a year, the Fatherland Party of Labor formed a coalition with the Bulgarian Socialist Party (the renamed Bulgarian Communist Party). Sofia Todorova et al, eds, *Koi kakav e?* 36-37 (SO "Informatsionno Obsluzhvane", 1990); Sofia Todorova, ed, *Who is Who in Elections '91* 63-64, 66-68, 91-97 (Information Service Co, 1991); Kertikov, *Bulg Qtrly* at 75 (cited in note 30).

<sup>44</sup> *Narodno Subranie, Zakon za politicheskite partii*, Durzhaven Vestnik No. 29 (State Gazette) 5, 5-7 (Apr 10, 1990) (enacted Bill on Political Parties).

<sup>45</sup> This was the non-public method of consultations at the RTT. *Round Table Contact Group Holds Sessions*, Daily Rep E Eur 3, 3 (Feb 15, 1990).

<sup>46</sup> This was a precedent because usually all RTT sessions were made public by direct broadcast. Romyana Kolarova and Dimitr Dimitrov, *Round Table Talks in Bulgaria* in Jon Elster, ed, *Round Table Talks* 1, 32-33 (Chicago, forthcoming 1994) (all page numbers refer to the draft chapter on file with the U Chi L Sch Roundtable).

legislative text.<sup>47</sup> In addition, the Supreme Court was authorized to review and reject only negative decisions of the Sofia Regional Court, the single judicial body authorized to register political parties.<sup>48</sup> Because the judicial procedure created by the new bill was highly centralized and thereby easily controlled by the Communist Party/state authorities, the top party officials essentially had the power to decide whether and how the MRF would be registered. Nonetheless, the MRF was recognized as an autonomous political organization and was allowed to participate in the elections for a parliament, which also would act as the Constituent Assembly.<sup>49</sup> The MRF was legally recognized not through a constitutional amendment, but by a tacit agreement negotiated at the RTT and legalized by the judiciary.

### 3. Gag rules and the constitution-making process.

The major political parties continued to judiciously employ the gag rules strategy during the constitution-making process to contain the potentially explosive issues of Communist Party culpability and ethnic minorities' rights. The task of drafting a new, democratic constitution fell to the newly elected Parliament, which thus served as the Constituent Assembly.

The political divisions within the Parliament perpetuated the need for the gag rules strategy. The distribution of seats in the Constituent Assembly reproduced the dominant position of the renamed Communist Party, the Bulgarian Socialist Party<sup>50</sup> (BSP), which held 216 out of 400 seats and could control the legislative and executive acts<sup>51</sup> of the Assembly. The UDF with

<sup>47</sup> Law on Political Parties, Art 3 §2(3). *Narodno Subranie, Zakon za politicheskite partii*, Durzhaven Vestnik No. 29 (State Gazette) at 5 (cited in note 44).

<sup>48</sup> Law on Political Parties, Art 9. *Narodno Subranie, Zakon za politicheskite partii*, Durzhaven Vestnik No. 29 (State Gazette) at 5 (cited in note 44).

<sup>49</sup> The elections were held on June 10 and 17, 1990. Troxel, 26 E Eur Q at 408 (cited in note 7). The Assembly was elected to draft a new constitution. *Narodno Subranie, Zakon za izmenenie i dopulnenie na Konstitutsiata na Narodna repoblika Bulgariia*, Durzhaven Vestnik No. 29 (State Gazette) 1, 5 (Apr 10, 1990) (Law on the Amendment of the Constitution, §50).

<sup>50</sup> During the election campaign, the Communist Party changed its name to the Bulgarian Socialist Party. Todorova, ed, *Who is Who in Elections '91* at 94 (cited in note 43). It seemed that one of the main results of the liberalization policy legitimized by the RTT was that the communists, like the Turks, were given the freedom to rename themselves whenever and however they wished.

<sup>51</sup> The Constituent Assembly had sovereign power to pronounce on executive and even judicial acts. During the period when there was a BSP cabinet, the BSP deputies included a wide range of issues on the agenda of the Constituent Assembly, even issues like the contaminated water of a high mountain dam lake. The BSP was obviously aiming

its 145 seats had veto power only on constitution-making, because a two-thirds majority was required for the approval of constitutional texts.<sup>52</sup> The MRF, although represented in the Constituent Assembly as the third largest parliamentary group with 23 seats, could not influence any legislation, including the constitutional texts.

In order to continue the process of liberalization and begin the next stage of democratization, both the BSP and the UDF had to make mutual concessions. Nevertheless, one issue continued to arise that the BSP was completely unwilling to discuss: communist party culpability and the responsibility of party members for the repressions carried out by the communist regime.<sup>53</sup> Predictably, the BSP and the UDF were irreconcilably divided on this issue. The BSP deputies radically opposed assignment of culpability and blocked all attempts by the UDF to include the issue on the agenda of the discussions.

Turkish minority rights became the second issue decided upon by the Constituent Assembly without public bargains and compromises. In the beginning of the parliamentary discussions, the BSP agreed to liberalize the procedure for the restoration of Muslim names. In October 1990, a law introducing a simple administrative procedure for restoring Muslim names was passed. Mass protests by the Bulgarian population in the regions predominantly inhabited by Turks immediately followed the enact-

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at shared responsibility for executive decisions. See, for example, *Veliko Narodno Subranie, Reshenie za podobriavazhe na ekologichnata obstazhouka okolo iazvir "Tonolizhitsa"*, Durzhaven Vestnik No. 66 (State Gazette) 2, 2-3 (Aug 17, 1990) (decision of National Assembly referring to contaminated waters); *Veliko Narodno Subranie, Reshenie za promeni v sustava na Burkhovniia sud na Narodna republika Bulgariia*, Durzhaven Vestnik No. 94 (State Gazette) 3, 3 (Nov 23, 1990) (decision of National Assembly giving the Assembly the power to elect and dismiss judges to the Supreme Court); *Veliko Narodno Subranie, Reshenie za izbirone glaven prokuror na Narodna republika Bulgariia*, Durzhaven Vestnik No. 90 (State Gazette) 2, 2 (Nov 9, 1990) (decision of National Assembly giving the Assembly the power to appoint attorney general); *Veliko Narodno Subranie, Reshenie za osvobozhdavane ot dluzhnost i izbirone na sudni v roionni, okruzni i voenni sudilishta*, Durzhaven Vestnik No. 79 (State Gazette) 1, 1-3 (Oct 2, 1990) (decision of National Assembly giving it the power to appoint justices for local, regional and military courts).

<sup>52</sup> Bulg Const, Art 143(3) in Durzhaven Vestnik No. 39 (State Gazette) 1, 10 (May 18, 1971).

<sup>53</sup> Since January 1990, the strategy of the BSP was to limit and personalize this issue as much as possible. However, under constant public pressure the party reformers started several show trials against top party leaders—the former communist leader Todor Zhivkov and his closest collaborators. In general, the judicial procedure was very slow and ineffective. The investigation started in 1990 and the trial did not begin until February 25, 1991.

ment of this procedure.<sup>54</sup> This time nationalistic actions were stifled by a simultaneous wave of anti-communist mass protests and strikes.<sup>55</sup> However, the BSP deputies became aware that public bargaining and concessions on the issue of Turkish minority rights would greatly erode the support of their electorate. Hence, they decided to introduce gag rules on the issue.

Because the issue of ethnic-religious minority rights could not be omitted, it was "privatized."<sup>56</sup> For example, the term "minority" was not used in any constitutional text. Constitutional provisions guaranteed the cultural autonomy of all Bulgarian citizens,<sup>57</sup> but reproduced the ban on political parties organized along any ethnic and religious lines.<sup>58</sup>

Regardless of the earlier concession on the restoration of Muslim names, the policy of consciously restricting MRF access to power was strictly followed by the BSP. As part of the process of liberalizing political participation, the government was to appoint new temporary local councils within three months, beginning in December 1990, with seats in the councils distributed in proportion to the number of votes won by each party in the general elections. This procedure was carefully controlled and delayed so that in the regions with predominantly Turkish populations, MRF representatives were effectively prevented from entering the local administrations.

When UDF deputies could no longer accept and obey gag rules on the issue of Communist Party culpability, they opted for the strategy of "democratic recalcitrants." In the beginning, they refused to participate in the plenary sessions of the Assembly, and later refused to sign the new constitution.<sup>59</sup> Initially, this recalcitrance was an unanimous decision, but later the UDF

<sup>54</sup> Kertikov, Bulg Q at 77 (cited in note 30). These protests were initiated and organized by BSP local activists and encouraged by the local administrations.

<sup>55</sup> This was closely related to the unwillingness of the BSP to include the issue of Communist party culpability on the agenda. *Politicheska deklaratsiia na parlamentarniia suiuz na demokratichnite sili*, Demokratsiia 1, 1, 4 (Oct 26, 1990) (declaration of UDF deputies); *Deklaratsia na KS na SDS*, Demokratsiia 1, 1 (Nov 21, 1990) (declaration of UDF deputies).

<sup>56</sup> See Holmes, Gag Rules at 24 (cited in note 3).

<sup>57</sup> Bulg Const, Art 36(2), 37(1) and 54(1) (Sofia Press Agency, 1991).

<sup>58</sup> As later interpreted by the Constitutional Court, this meant that parties claiming to represent the interests of only Christians or of only Bulgarians should also be banned. *Konstitutsionen Sud, Reshenie No. 4 ot 21 april 1992 g. no konstitutsionno delo No. 1 ot 1991 g.*, Durzhaven Vestnik No. 35 (State Gazette) 1, 1-8 (Apr 28, 1992) (Decision No. 4 of the Constitutional Court).

<sup>59</sup> *Politicheska deklaratsiia*, Demokratsiia at 1 (cited in note 55); *Deklaratsia na KS na SDS*, Demokratsiia at 1 (cited in note 55).



parliamentary group split on that issue.<sup>60</sup>

The MRF deputies in the Assembly, elected as representatives of the Turkish minority, also refused to sign the new constitution, thus opting for the strategy of “democratic recalcitrants” already legitimized by the UDF deputies.<sup>61</sup> Both parties reacted to the gag rules imposed by nationalistic and pro-communist majorities by focusing public attention on the “gagged” issues. This made the strategy of the BSP at least partially unproductive.

## B. The Role of Democratic Recalcitrance

In order to understand the strategy of democratic recalcitrance, it is essential to distinguish it from spontaneous mass protest. Democratic recalcitrance in Bulgaria manifested as the strategy of a negotiating partner who refuses to accept the terms offered by the authoritarian rulers, seeking to discredit them nationally as well as internationally. The UDF and MRF representatives could follow this policy only after they were accepted as negotiating partners or elected in the Constituent Assembly.

### 1. Democratic recalcitrance during the pre-constitutional negotiations.

During the RTT, the UDF representatives successfully used this strategy of democratic recalcitrance. Reacting to the unwillingness of the BSP to make concessions, they twice left the negotiations and called for mass protest.<sup>62</sup> In both cases the points of disagreement between the parties were not directly related to either the issue of communist culpability or minority rights because the UDF had accepted the gag rules proposed by the BSP on these issues during this pre-constitutional negotiations phase. As noted above, the UDF became unwilling to accept such gag rules during the constitution-making process. Not being invited to the RTT and thus not recognized as leaders of an organization legitimately representing the Turkish minority, the MRF activ-

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<sup>60</sup> The split started during the national conferences of the UDF in April and May of 1991 and became unavoidable after the signing of the new Constitution. The UDF split into three parties: the UDF, the UDF-Liberals and the UDF-Center. All three parties participated in the general elections held in October 1991. Todorova, ed, *Who is Who in Elections '91* at 24, 50, 54 (cited in note 43).

<sup>61</sup> Georgi Stoianov, *DPS napusna zalata*, *Demokratiia* 1, 1-2 (Jun 8, 1991) (MRF deputies refuse to sign constitution).

<sup>62</sup> *Round Table Negotiations Going Slowly*, *Daily Rep E Eur* 7, 7 (Feb 8, 1990).

ists were not in a position to play democratic recalcitrants during this period.

## 2. Democratic recalcitrance during the constitution-making process.

Both the UDF and the MRF were in a better position to use the democratic recalcitrance strategy during the constitution-making process. The election of their deputies to Parliament bolstered their legitimacy. In addition, the BSP lacked the requisite two-thirds majority to adopt the constitution and thus, was forced to make concessions to the UDF and MRF in order to get the constitution adopted.

When the results of the general elections were announced, the UDF supporters reacted with massive protests.<sup>63</sup> As the only legitimate anti-communist coalition, the UDF had a virtual monopoly on public protest and could easily use it as an efficient means for imposing change. In fact, as a result of mass street protests following the first elections, the BSP was forced to share presidential power with the UDF.<sup>64</sup>

The first attempt of the UDF to be recalcitrants in the Constituent Assembly was in December 1990, when all of its deputies left the parliament to protest against both the election of the cabinet by the BSP majority and the "gagging" of the issue of party culpability and retributive legislation.<sup>65</sup> Mass public protests backed this move of the UDF deputies. Sofia, the capital of

<sup>63</sup> The UDF made accusations that the BSP was guilty of manipulations and forgeries during the elections. *Deklaratsiia na suiuzna na demokratichnite sili*, *Demokratiia* 1, 1 (Jun 14, 1990) (declaration by UDF deputies); Alexander Iordanov, *Izborniat Urok*, *Demokratiia* (Jun 14, 1990); *Purvo faktite—posle doverieto, razgovor s d-r Zheliiu Zhelev*, *Demokratiia* 1, 1 (Jun 25, 1990) (interview with Zheliiu Zhelev).

<sup>64</sup> As part of the RTT agreements, a presidential institution with limited powers was introduced and Petar Mladenov, a well known Communist Party reformer was elected president by the old regime parliament. After the general elections, as a result of a raising wave of mass protest, Mladenov resigned. *Veliko Narodno Subranie, Reshenie*, *Durzhaven Vestnik* No. 62 (State Gazette) 1, 1 (Aug 3, 1990) (announcing Mladenov's resignation). After five unsuccessful attempts to elect a replacement for Mladenov, the leader of the UDF, Zheliiu Zhelev, was elected president by the Constituent Assembly as part of a deal between the BSP and the UDF. *Veliko Narodno Subranie, Reshenie*, *Durzhaven Vestnik* No. 63 (State Gazette) 1, 1 (Aug 7, 1990) (announcing Zhelev's election). As part of the same deal and on the same day, General Atanas Semerdjiev, ex-Army Chief of Staff and ex-Minister of Interior, was elected vice-president.

<sup>65</sup> The BSP majority blocked the attempts of the UDF to include in the parliamentary agenda the issue of confiscating Communist Party property. *Politicheska deklaratsiia*, *Demokratiia* at 1 (cited in note 55); *Deklaratsiia na KS na SDS*, *Demokratiia* at 1 (cited in note 55).

Bulgaria, was paralyzed by political strikes calling for the resignation of the newly-formed cabinet.<sup>66</sup>

The legitimacy of the BSP as a dominant democratizing agent was extremely vulnerable to mass protest appeals for several reasons. First, because it was the former Communist Party, the BSP had trouble distancing itself from its antidemocratic record. Second, the BSP could not derive complete legitimacy from the elections because the elections were hastily called and the opposition lacked sufficient time, resources and organization to campaign effectively. In addition, the elections only gave the BSP a narrow majority in Parliament. Thus, although it had a parliamentary majority, the BSP was forced to create a coalition cabinet including all parliamentary forces, except the MRF, and to sign an agreement setting a timeframe for the constitution-making process.<sup>67</sup> After appeasing the mass protest movement, the BSP majority, supported by some of the UDF deputies, declared their intent to discuss the constitution drafts for at least another year and thus delay the elections.

In May, 39 UDF deputies, proponents of the non-cooperative strategy towards the BSP, left the parliament calling for immediate general and local elections.<sup>68</sup> Some of them even declared a hunger strike.<sup>69</sup> This was a clear case of democratic recalcitrance. The socialist party quickly reacted by starting an accelerated procedure for passing the constitutional text into law.

As constitutional framers, the BSP deputies were very sensitive to any public criticism because of their weak legitimacy as democratic agents. They attempted to match the liberal-democratic criteria as much as possible. Even when dealing with ethnic minority rights, the BSP tried to abide by internationally-accepted standards. As a result, the Assembly recognized the right of members of non-Bulgar ethnic groups to study their

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<sup>66</sup> *Stachno reshenie na knofederatsiata na gruda "Podkrepa,"* Demokratsiia 1, 1 (Nov 26, 1990) (declaration by Podkrepa). The BSP Prime Minister resigned as a result of these mass protests. Troxel, 26 E Eur Q at 416-19 (cited in note 7).

<sup>67</sup> All parties represented in the parliament agreed to prepare and vote upon the new constitution within a five-month period running from January to May 1991. They also agreed to schedule general elections in June 1991. The agreement was not passed as a decision of the Constituent Assembly and the deputies could overstep it. *Sporazumenie mezhdu politicheskite sili, predstaveni vuv velikoto narodno subronie, za garantirane na murniaa prekhod kum demokratichno obshtestvo,* Demokratsiia 3, 3 (Jan 5, 1991).

<sup>68</sup> Georgi Koritarov, *39 denutati ot SDS hapusnakha zalata,* Demokratsiia 1, 1-2 (May 15, 1991).

<sup>69</sup> *UDF MPs on Hunger Strike in Protest at [sic] New Constitution; Rally Supports Them,* BBC Summary of World Broadcasts (Jul 16, 1991).

mother tongue, albeit after long and wearying discussions.<sup>70</sup> Nevertheless, the constitutional draft virtually reproduced the text of the RTT "Bill on Parties," despite the protestations of the MRF deputies. The constitutional text explicitly banned parties along ethnic, racial or religious lines.<sup>71</sup> The MRF deputies tried to negotiate and bargain on this issue, but after the UDF walk-out, none of the remaining politicians in the parliament considered the MRF's arguments seriously.

Anticipating retributive actions by the anti-communist parliamentary majority, which was expected to be in place after the second elections, the BSP majority drafted the constitutional text to provide the strongest possible guarantees for individual human rights and vested the Constitutional court with relatively strong powers to review legislative acts passed by the parliament. Within two months, the constitutional draft was discussed, voted on three times, and finally signed by the required two-thirds majority of the Constituent Assembly on July 12, 1991.<sup>72</sup>

The UDF parliamentary group split over the new Constitution. At least 60 of the deputies, following the democratic recalcitrance strategy, refused to sign the new Constitution and claimed that it was not legitimate.<sup>73</sup> The MRF parliamentary group also split over the Constitution. More than half of the Turkish minority representatives<sup>74</sup> refused to sign it because the text included articles banning political parties along ethnic and reli-

<sup>70</sup> Bulg Const, Art 36 (2) states: "Citizens whose mother tongue is not Bulgarian shall have the right to study and use their own language alongside the compulsory study of the Bulgarian language."

<sup>71</sup> Bulg Const, Art 11(4) declares: "There shall be no political parties on ethnic, racial or religious lines, nor parties which seek the violent usurpation of the state power."

<sup>72</sup> *The New Constitution is Adopted*, Bulgarian Telegraph Agency (BTA) Daily News 2, 2 (Jul 12, 1991).

<sup>73</sup> The UDF Ministers in the coalition government were among the 60 MPs who did not sign the constitution. The President refused to sign the new constitution as well, but this was a symbolic act as he had no veto power. *309 deputati se podpisakha pod novata konstitutsiia parlamentut pia "mila rodino" i pi shampansko*, Duma 1, 1-2 (Jul 13, 1991); *Mitko Bozhkov, Iuridicheskiiat gafe na Georgi Markov, a ne na parlamenta*, Duma 1, 1-2 (Jul 16, 1991); Bulg Const, Transitional and Concluding Provisions, cl 9.

<sup>74</sup> Though only ethnic Turks voted for the MRF candidates in the elections for the Constituent Assembly, the MRF leaders were very cautious not to be accused of being an organization based along ethnic and religious lines and thus not allowed to participate in the elections. To avoid this, they included a significant number of ethnic Bulgarians in their party lists. As a result, at least one third of the MRF deputies in the Assembly were ethnic Bulgarian and Christian. All of these deputies signed the Constitution and were afterwards expelled from the MRF and replaced by other Christian Bulgarians. *The New Constitution is Adopted*, BTA Daily News at 2 (cited in note 72); *Stoianov, DPS napusna zalata*, *Demokratiia* at 1 (cited in note 61).

gious lines.<sup>75</sup> Shortly thereafter, 93 BSP deputies lodged a complaint in the Constitutional Court asking that the MRF be declared an unconstitutional organization.<sup>76</sup>

The first stage of the process of integrating the Turkish minority into Bulgarian politics was dominated and controlled by the BSP, the former Communist Party. The BSP promoted a nationalistic policy through its majority in the parliament that “gagged” the issue of ethnic-religious rights and through its local activists who, as a rule, organized the nationalist anti-Turkish protests in the regions inhabited predominantly by ethnic Turks. However, the UDF’s strategy of democratic recalcitrance limited the BSP’s range of action. As a result, the BSP majority in the Constituent Assembly gave enough guarantees of their willingness to frame a relatively democratic constitution that one faction of UDF deputies decided to accept the gag rules imposed by the majority. These UDF deputies limited the scope of their political agenda in order to make further democratization possible, and focused on more general issues—separation of powers and basic human rights. The remaining portion of the UDF deputies rejected concessions, continued to follow the democratic recalcitrance strategy, and refused to bargain under the condition of BSP domination. In fact, the non-cooperative UDF deputies questioned the productivity of the gag rules imposed on the issue of retribution and strengthened the pro-communist/anti-communist cleavage.

At the end of the liberalization stage, the MRF, although legalized through a complicated procedure, had equal status with the other political parties. It had enough freedom to develop an effective organizational structure. The MRF could rely on the firm support of ethnic Turks, who almost unanimously voted for the MRF. Nevertheless, the Turkish minority activists were forced to refrain from public affirmation of their ethnic and religious identity. When nominating candidates for general elections and building its organizational structure, the MRF invited ethnic Bulgarians to speak publicly for them.

The most important accomplishment achieved by the gag rules was the avoidance of a radical public confrontation on ethnic-religious issues. These rules averted the dangerous ethnification<sup>77</sup> of the political process that blocked the democra-

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<sup>75</sup> Bulg Const, Art 11(4).

<sup>76</sup> *Konstitutsionen Sud, Reshenie No. 4*, Durzhaven Vestnik No. 35 (State Gazette) at 1 (cited in note 58).

<sup>77</sup> Ethnification is the differentiation of the status rights of acting political parties ac-

tization process in Yugoslavia and in some of the former Soviet republics. In addition, the text of the new Constitution gave at least some protection against future cultural and religious discrimination of the Turkish minority.

#### IV. SECOND STAGE: DEMOCRATIZATION

The new Constitution adopted by the Constituent Assembly introduced the separation of powers between the Parliament, the President, the Government, the Constitutional Court and the Judiciary.<sup>78</sup> On October 12, 1991, less than three months after the adoption of the Constitution, the voters elected the President, members of Parliament, and local officials in general and local elections.<sup>79</sup> The Constitutional Court was also elected in October.<sup>80</sup> In November, the new cabinet was elected, followed by the direct presidential elections in January 1992.<sup>81</sup>

The results of the general elections were quite unexpected. Only three parties entered the parliament—the non-cooperative splinter group of the UDF (110 seats), the BSP (106 seats), and the MRF (24 seats).<sup>82</sup> These elections gave a clear parliamentary majority to the non-cooperative anti-communist parties, the UDF and the MRF. At the same time, the narrow parliamentary majority of the UDF and the MRF guaranteed veto power to the BSP on constitutional amendments. The local elections showed

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ording to the ethnic affiliations of their supporters. See Claus Offe, *Strong Causes, Weak Cures*, *E Eur Const Rev* 21, 21-23 (Spring 1992); *Capitalism by Democratic Design? Democratic Theory Facing the Triple Transition in East Central Europe*, 58 *Social Research* 865, 876 (1991).

<sup>78</sup> Bulg Const, Ch 3, 4, 5, 6, and 8.

<sup>79</sup> Troxel, 26 *E Eur Q* at 419-25 (cited in note 7).

<sup>80</sup> *Burkhoven Sud, Reshenie No. 2 ot 18 septemvri 1991 g.*, *Durzhaven Vestnik* No. 81 (State Gazette) 12, 12-13 (Oct 2, 1991) (Decision No. 2 of the Supreme Court nominating judges to the Constitutional Court); *Veliko Narodno Subranie, Reshenie za izbirane chlenove na Konstitutsionniiia sud*, *Durzhaven Vestnik* No. 82 (State Gazette) 7, 7 (Oct 4, 1991) (decision of the National Assembly nominating judges to the Constitutional Court); *Prezident na Republikata, Ukaz No. 299*, *Durzhaven Vestnik* No. 82 (State Gazette) 8, 8 (Oct 4, 1991) (presidential decree nominating judges to the Constitutional Court).

<sup>81</sup> Bulg Const, Final and Concluding Provisions, cl 7(2); *Veliko Naordno Subranie, Zakon za izburane na prezident i vitseprezident na republikata*, *Durzhaven Vestnik* No. 82 (State Gazette) 1, 1-2 (Oct 4, 1991) (law on the election of President and Vice President); *Veliko Naordno Subranie, Zakon za izmenenie i dopulnenie na Zakona za izburane na prezident i vitseprezident na republikata*, *Durzhaven Vestnik* No. 98 (State Gazette) 1, 1-3 (Nov 28, 1991) (law amending the law on the election of President and Vice President).

<sup>82</sup> The cooperative oppositional parties, who signed the constitution and split off from the UDF, could not pass the four percent threshold because of their irrational policy of running separately or forming small coalitions. See Troxel, 26 *E Eur Q* at 423 (cited in note 7) (statement of the Central Electoral Committee on Nov 1991).

that while the BSP had lost its dominant position in more than half of the local councils, the MRF had gained a majority in only 28 out of 255 local administrative bodies. Under these conditions no political party could control the outcome of the political process *ex post*.

#### A. Gag Rules in the Context of Separation of Powers

The cabinet was elected by the new parliamentary majority of the UDF and the MRF. This was a very peculiar coalition government. The cooperation between these coalition partners was never regulated through any agreements and was based predominantly on their radical anti-communist attitudes and on the uncertain status of the MRF.<sup>83</sup> All BSP attempts to influence the legislative process were unanimously rejected by the UDF and MRF deputies. Virtually no bargaining in the parliamentary discussions occurred, neither with the BSP, nor between the UDF and the MRF. The coalition partners usually agreed about their mutual concessions before the discussions and were unwilling to consider the BSP position.

Initially, the strategies of the UDF and MRF did not overlap or conflict. The main concerns of the MRF were the issues of the constitutionality of its existence as a political party and the legislative and administrative regulation of Turkish minority rights recognized in the new constitution.<sup>84</sup> The main concern of the UDF was economic reform and the so-called "decommunization laws".<sup>85</sup>

Regardless of their non-cooperative parliamentary policy toward the BSP, both the UDF and the MRF were quite cautious about the anti-Turkish attitudes of the majority of the public. Gag rules on the issue of Turkish minority rights were strictly followed. By mutual agreement, there were no MRF Ministers or Vice-Ministers in the UDF cabinet. The right to study Turkish language at schools was institutionalized by a two stage procedure similar to the one followed by the BCP when restoring the Arabic names of the Muslims. It was delayed initially until September 1991 through a moratorium passed by the Constituent

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<sup>83</sup> The Constitutional Court waited to decide the issue of the MRF's constitutionality until April 1992. *Konstitutsionen Sud, Reshenie No. 4*, Durzhaven Vestnik No. 35 (State Gazette) at 1-8 (1992 decision in which the Constitutional Court interpreted the constitutional ban on ethnic-based parties) (cited in note 58).

<sup>84</sup> Todorova, ed, *Who is Who in Elections '91* at 74-76 (cited in note 43).

<sup>85</sup> *Id* at 24-49.

Assembly,<sup>86</sup> and later pushed backed until March 1992 by an executive decree of the Council of Ministers issued on November 29, 1991.<sup>87</sup> The decree immediately provoked mass protests by the Bulgarians in regions with mixed populations.<sup>88</sup> To appease the protestors, the procedure instituting ethnic minority rights was delayed first by the Ministry of Education, and then by a moratorium passed by the parliament. It was not until March 1992 that classes in the Turkish language were finally introduced in state schools.

During the presidential elections, the vulnerability of UDF cooperation with the MRF to the BSP policy of exploiting nationalistic feelings and xenophobic fears of the Bulgarian population became obvious. Due to an active nationalistic campaign,<sup>89</sup> Velko Valkanov, the BSP supported candidate, got 47.3 percent of the votes in the second round run off election, while Zhelyu Zhelev, the UDF and MRF supported candidate and president elect, got 52.7 percent of the votes.<sup>90</sup>

Gag rules on the issue of Turkish minority rights were steadily legalized and institutionalized in Bulgarian politics. Another example of the gag rules strategy on the issue of Turkish minority rights was the decision of the Constitutional Court regarding the MRF's constitutional status. Beyond doubt, the members of the Court were affiliated with the two major political actors in Bulgaria, the BSP and the UDF. The final decision by the Court was delayed several times. However, the decision narrowly upholding the MRF's status finally was announced on April 20, 1992. This action was due to the pressure of the May 5th acceptance of Bulgaria into the Council of Europe.<sup>91</sup> European

<sup>86</sup> The UDF and the MRF controlled the required parliamentary majority to pass such an act, but they were constrained by fear of public reaction. *Velikonarodno Subranie, Ukaz No. 98*, Durzhaven Vestnik No. 22 (State Gazette) 1, 1 (Mar 19, 1991) (Decree No. 98 of the Constituent Assembly).

<sup>87</sup> *Ministerski Suvet, Postanovlenie No. 232 ot 29 Noemvri 1991 g. za izuchavane na maichin ezik v obshtinските uchilishta*, Durzhaven Vestnik No. 102 (State Gazette) 1, 1 (Dec 10, 1991) (Council of Minister's Decision No. 232).

<sup>88</sup> Again, the BSP local party activists initiated and organized these protests and the BSP representatives in the local administrations encouraged these protests.

<sup>89</sup> In a public dispute between the two rounds of the elections, Velko Valkanov accused Zhelyu Zhelev of being a Turk. On the first round, Zhelev received 47.2 percent of the vote against the 30.8 percent of the vote that Valkanov received. *Prezidentski Izbori, Biuletin 6-7* (Jan 12-19, 1992). The increase in the votes for Velko Valkanov was quite obvious in the regions comprised of both Turkish and Bulgarian ethnic groups. Id at 177-97, 519-77.

<sup>90</sup> Id.

<sup>91</sup> *Bulgariia se zavurna v lonoto na evropeiskoto semeistvo*, Demokratsiia 1, 1 (May 6,



officials had made it clear that if the MRF was declared unconstitutional, Bulgaria would not meet the requirements for admission to the European Council.<sup>92</sup> The Constitutional Court, while affirming the MRF's constitutionality, did so in the narrowest possible way, leaving open the possibility of future challenges to the legitimacy of the Turkish-based organization.<sup>93</sup> It is significant that the claim that the MRF was unconstitutional was rejected by the veto power of the five pro-UDF justices.<sup>94</sup> Under the Bulgarian Constitution, rulings by the Constitutional Court require a majority of more than half the justices in order to become effective.<sup>95</sup> Thus, anything that the Court fails to declare unconstitutional is considered to be constitutional. Clearly, the Constitutional Court justices were radically divided and unwilling or unable to make a positive decision on the issue.

## B. Strategy of Democratic Recalcitrance

The issues of party culpability and retributive legislation were priorities on the UDF agenda. Elected with a program that included plans for retributive legislation and radical anti-communist slogans, once in office the UDF and MRF deputies quickly passed a law for confiscation of Communist party property<sup>96</sup> and inserted provisions in crucial laws (e.g. the law on banking law and the law on pensions) that discriminated against former Communist Party leaders.<sup>97</sup> Simultaneously, retributive judicial pro-

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1992) (discussing Bulgaria's admission to the Council of Europe).

<sup>92</sup> Id at 7.

<sup>93</sup> Kjell Engelbrekt, *Bulgaria*, 1 RFE/RL Research Report: Toward the Rule of Law 4, 6 (Jul 3, 1992).

<sup>94</sup> See *Turkish Party in Bulgaria Allowed to Continue*, E Eur Const Rev 11, 11 (Summer 1992); Engelbrekt, 1 RFE/RL Research Report: Toward the Rule of Law at 6 (cited in note 93).

<sup>95</sup> Bulg Const, Art 151(1).

<sup>96</sup> *Narodno Subranie, Zakon za imushtestvoto na Bulgarskata komunisticheska partiia, Bulgarskiiia zemedelski naroden suiuz, Otechestveniiia front, Dimitrovskiiia komunisticheski mladezhki suiuz, Suiuz na aktivnite bortsii protiv fashizma i kapitalizma i Bulgarskite profesionalni suizi*, Durzhaven Vestnik No. 105 (State Gazette) 1, 1-2 (Dec 19, 1991) (law on the confiscation of property owned by the Bulgarian Communist Party and affiliated organizations). The bill also provided for the confiscation of the property of all organizations existent under and affiliated with the old regime—Communist Youth Union, Fatherland Front, Trade Union, Bulgarian Agrarian National Union, etc.

<sup>97</sup> *Narodno Subranie, Zakon za bankite i kreditnoto delo*, Durzhaven Vestnik No. 25 (State Gazette) 1, 1-8 (Mar 27, 1992) (law on banking and lending); *Narodno Subranie, Zakon za izmenenie i dopulnenie na Zakona za penziite*, §6, Durzhaven Vestnik No. 52 (State Gazette) 1, 1 (Jun 26, 1992) (§6 of this law amends the pension law by introducing a new article, Article 10a, which calls for the confiscation of property of the Communist

cedures were accelerated, and the anti-communist parliamentary majority voted for the lifting of former BSP Prime Minister Andre Lukanov's parliamentary immunity and issuing a warrant for his arrest.<sup>98</sup> The BSP reacted by appealing all retributive parliamentary acts to the Constitutional Court, by leaving plenary sessions, and by calling for mass protests.<sup>99</sup> The walk-outs and mass protests were the BSP's attempts to play democratic recalcitrants, but they lacked credibility. Though a considerable number of BSP supporters were mobilized to protest, the general public assessed this as partisan activity.

The Constitutional Court confirmed the constitutionality of the law on the confiscation of Communist Party property and the decisions concerning Lukanov's immunity, but overruled those parts of banking law and pensions law that violated individual human rights of former communist leaders.<sup>100</sup> The Court determined that those portions of the banking and pensions laws contradicted the constitution and the European Convention of Human Rights, which Bulgaria had signed and ratified. Thus, the Constitutional Court was the body which provided an impartial solution on the issue of retribution. The Court's decisions also provided an opportunity for the governing majority to weaken its militant anti-communist policy without making public concessions to the BSP.

The "decommunization laws" put the MRF in an awkward situation. The more involved the MRF became in decommunization and retribution, the more open and threatening BSP-supported nationalism became.

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Party and affiliated organizations).

<sup>98</sup> *Narodno Subranie Reshenie za snemane na imunitet na naroden predstavitel*, Durzhaven Vestnik No. 57 (State Gazette) 3, 3 (Jul 14, 1992) (decision of the National Assembly calling for the arrest of Andrei Lukanov).

<sup>99</sup> *Trevoga za Bulgarskata demokratiia*, Duma 1, 1-2 (Jun 6, 1992) (memorandum of BSP deputies); Svetlana Kructeva, *Parlamentut raboti rezultatho i bez sotsialisti*, Demokratiia 1, 1-2 (Jul 25, 1992).

<sup>100</sup> *Konstitutsionen Sud, Reshenie No. 8 ot 27 iuli 1992 g. no konstitutsionio delo No. 7 ot 1992 g.*, Durzhaven Vestnik No. 64 (State Gazette) 3, 3-4 (Jul 31, 1992) (Constitutional Court's decision on the banking law); *Konstitutsionen Sud, Reshenie No. 9 ot 27 iuli 1992 g. no konstitutsionio delo No. 4 ot 1992 g.*, Durzhaven Vestnik No. 64 (State Gazette) 1, 1-4 (Aug 7, 1992) (Constitutional Court's decision on the law confiscating the Communist Party's property); *Konstitutsionen Sud, Reshenie No. 11 ot 29 iuli 1992 g. no konstitutsionio delo No. 18 ot 1992 g.*, Durzhaven Vestnik No. 64 (State Gazette) 4, 4-6 (Aug 7, 1992) (Constitutional Court's decision on the law amending the pension law).

### C. The Crisis of the Anti-communist Majority

The MRF behaved as a loyal partner in its coalition with the UDF, supporting all legislative drafts of the UDF despite the fact that the main concerns of UDF legislative policy adversely affected both the interests of the MRF electorate and the organization itself. For example, the MRF supported the radical restitution of landed property and the severe economic austerity program of the UDF cabinet.<sup>101</sup> The economic measures gravely affected the Turkish population because they were traditionally landless and employed in heavily subsidized industries.<sup>102</sup> The coinciding jump in unemployment<sup>103</sup> and the liquidation of the socialist cooperative farms caused an uncontrolled wave of Turkish emigration, comparable to Turkish emigration in 1989. According to December 1992 census figures, 120,000 Turks were reported to have emigrated from Bulgaria during the previous year.<sup>104</sup> Economic reform, along with privatization and the introduction of a market economy, did not facilitate the integration of the Turkish minority. On the contrary, these policies enhanced the economic divisions and contributed to the ethnic-religious unrest.

The UDF dominated the decision-making process in the parliament and cabinet. Although occupying a key swing position in the parliament,<sup>105</sup> the MRF never had the legitimacy of a center-orientated party. Any references to the interests and preferences of the MRF electorate could always be interpreted as ethnic separatism constituting a potential threat to national integrity and sovereignty. In order to defend both the interests of its electorate and its strategic position in the parliament, the MRF had to find an impartial actor to represent its interests in the parliament. This actor could legitimize the MRF's use of its swing position in the parliament and the MRF's attempts to begin bargaining with the BSP, which also opposed the radical

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<sup>101</sup> Krasimir Kunev, *Natsionalnoetnicheskite problemi i formiraneeto na politicheskiiia spectur v Bulgariia* in *1 Seminar Aspekti na etnokulturnata situatsiia v Bulgariia i na Balkanite* 96, 100 (Izdava se ot Tsentura za izsledvane na demokratsiata i fondatsiia "Fridrikh Nauman", 1992).

<sup>102</sup> Id.

<sup>103</sup> In some areas with ethnically mixed populations, unemployment has reached 40 percent or even 50 percent. In some villages, unemployment is 90 percent. *Minority Unemployment Goes Up*, BTA Daily News External News Service 4, 4 (Jul 30, 1992).

<sup>104</sup> Filipov and Tsvetarski, *Vunshnata migratsiia* at 11-16 (cited in note 14); National Statistical Institute, *Vutreshna i vunshna migratsiia* at 28-34 (cited in note 28).

<sup>105</sup> The other two parties in the parliament, the UDF and the BSP, were irreconcilably divided and could never form a coalition cabinet.

economic reform. The only political authority conceived by the general public as an impartial political actor was the President.<sup>106</sup> With the active support of the President, MRF deputies publicly opposed the radical economic policy of the UDF and asked for personnel changes in the cabinet.<sup>107</sup> The UDF refused to make any concessions, preferring parliamentary crisis and new general elections to changes in cabinet policy.<sup>108</sup> In response, the MRF withdrew its support for the UDF cabinet, causing a governmental crisis.<sup>109</sup>

This crisis lasted two months, during which time neither the UDF nor the BSP could confirm a cabinet without the support of the MRF. The MRF was the third and the last party to propose a prime-minister-designate in an attempt to form a cabinet.<sup>110</sup> According to the Constitution, if that attempt failed the parliament was to be dissolved and pre-term general elections were to be held. The MRF nominated Professor Lyuben Berov, a prominent intellectual and influential presidential advisor on economic policy, as the prime-minister-designate.<sup>111</sup> The proposed cabinet included experts, who were not affiliated with any political party, and only one MRF representative, who was an ethnic Bulgarian.

The BSP had to choose between possible further marginalization through the restoration of the non-cooperative, anti-communist parliamentary majority by pre-term elections, or supporting the MRF candidate for Prime Minister thus causing a split in that majority. The ex-communist party chose the latter, legitimizing the role of the MRF as a moderator in the parliament, and recognizing the Turkish minority party as an impartial political partner.<sup>112</sup> In exchange, the BSP declared its expectations of MRF support for a softening of the decommunization policy.<sup>113</sup>

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<sup>106</sup> According to the Constitution, the President is the Head of the State who represents the whole nation because he is elected in a nationwide vote. Bulg Const, Arts 92 and 93.

<sup>107</sup> *Ahmed Dogan on Government*, BTA Daily News 3, 3 (Jul 28, 1992); *Dogan Votes No Confidence in the Government*, BTA Daily News 6, 6 (Jul 25, 1992).

<sup>108</sup> *SDS Says Early Elections Are Being 'Forced' on It*, BTA Daily News 4, 4 (Nov 24, 1992).

<sup>109</sup> *Parliament Votes No Confidence in the Cabinet, Filip Dimitrov Resigns*, BTA Daily News 3, 3 (Oct 28, 1992).

<sup>110</sup> *SDS—DPS Consultations Continue*, BTA Daily News 8, 8 (Dec 17, 1992); *DPS Rejects SDS Candidate*, BTA Daily News 7, 7 (Dec 21, 1992).

<sup>111</sup> *DPS Picks Economist Lyuben Berov for P.M.*, BTA Daily News 5, 5 (Dec 22, 1992).

<sup>112</sup> *New Prime Minister Elected*, BTA Daily News 5, 5 (Dec 22, 1992); *Who's Who in the New Bulgarian Cabinet, Cabinet Crisis Ends*, BTA Daily News 6, 6-7 (Dec 22, 1992).

<sup>113</sup> Before the cabinet was elected, the majority of the BSP and the MRF revoked the

Put in the position of an oppositional parliamentary minority, the UDF opted again for the democratic recalcitrance strategy, calling for pre-term general elections. All subsequent attempts of the MRF and a splinter group of UDF deputies to form shifting majorities in the parliament have proven virtually impossible.<sup>114</sup>

### CONCLUSION

Liberalization was an unavoidably long stage in the Bulgarian transition to democracy. Its outcome was mainly predetermined by the stability of the communist regime, the lack of active dissidents, and the relatively mild government repressions. After the first free elections, the ex-communist party redefined and/or reproduced its legitimacy and consequently retained the potential to dominate the political process.

The policy of the BSP towards the MRF never included introducing universal standards, mutual concessions, or self-restraint through bargaining because it became clear that such strategies would substantially erode the electoral support for the BSP. The strategy of the ex-communist party, reformist elite was to preserve the deprived position of the Turkish minority, not through direct interference into ethnic-religious community life, but by conditioning their political freedoms through gag rules and judicial review. Dominating the constitution-making process, the BSP "privatized" the issue of ethnic-religious minorities rights, assuring through constitutional provisions the further institutionalization of the gag rule's strategy. The MRF, after becoming part of the governing parliamentary majority, also agreed to follow this strategy, as it proved to be the most rational way of resolving ethnic-religious conflicts in Bulgarian society.

The policy of the Bulgarian Socialist Party, the incumbent party elite, was aimed at preemptive political and economic changes that would guarantee a gradual transition towards liber-

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warrant for arrest of Andrei Lukanov, former Prime Minister of the transitional BSP cabinets. The act was a symbolic one, as, according to the law, Lukanov was to be released in ten days, on January 8, 1993. *Narodno Subranie Reshenie za chastichna otmiana na Reshenieto za snemane na imunitet na naroden predstavitel ot 7 iuli 1992 g.*, Durzhaven Vestnik No. 105 (State Gazette) 2, 2 (Dec 31, 1992) (National Assembly's decision to free Lukanov).

<sup>114</sup> Currently, 32 of the 110 UDF deputies support the cabinet of Berov. *Filip Dimitrov's Nomination Defeated in the Parliament*, BTA Daily News 4, 4-5 (Nov 20, 1992); *Coalition Cabinet or Elections to Become Known Soon*, BTA Daily News 4, 4 (Dec 14, 1992).

al democracy and market economy. By using the strategy of gag rules, they tried to promote what Nietzsche called *aktive Vergesslichkeit* (literally, "active forgetfulness").<sup>115</sup> By closing the books on the past and keeping retribution for former crimes off the political agenda, the BSP tried to secure the compliance of the UDF and the other oppositional parties.<sup>116</sup> This strategy was delegitimized and thus became unproductive for two reasons: first, the *aktive Vergesslichkeit* formula of the ex-communist party, the BSP, was viewed as imposed on rather than accepted by the opposition because the BSP held a majority in parliament; second, the BSP refused to answer to the appeals of the opposition, backed by the general public, for active penance. As a result, gag rules only strengthened the pro-communist/anti-communist cleavage in Bulgarian society, making it dominant at least until the next general elections.

In post-communist societies, majorities are usually formed along irreconcilable conflicts and established divisions. The political changes in Bulgaria have led to a peculiar cross-sectioning of two major divisions—ethnic/religious and pro-communist/anti-communist. It is unclear whether the swing position of the ethnic-religious minority party is a mere coincidence or a quite predictable, if unintended, consequence of the cautious, rational and non-cooperative policy of the two dominant political actors. In either case, this is the only formula that has shown relatively good prospects for the democratization process in Bulgaria.

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<sup>115</sup> See Holmes, *Gag Rules* at 27 (cited in note 3).

<sup>116</sup> *Id.*

