

Monthly Brief for September 2016 from the monitoring of the Chapter 23 – Judiciary, Fight against Corruption, and Fundamental Rights

I JUDICIARY

Independence

1. Reassignment of Judges in the Primary Court Skopje 1

The Primary Court Skopje 1 reassigned several judges within its department on two occasions and thus changed the annual schedule. In this eyes of the public, this reassignment was associated with the cases of the Special Public Prosecutor (SPP) and it prompted suspicions about the choice of judges who were to be assigned to those cases. According to the Court, the reassignment took place during the Collegium of Judges held on 13 September 2016 which was attended by all judges.¹ The main reason was the election of two new judges by the Judicial Council since one judge was promoted to the Appellate Court, two judges were retired, and there was also the need to assign two heads of departments. Five judges requested reassignment by invoking Article 39, paragraph 7 of the Court Law which stipulates that judges “can” be transferred from one department to another. According to the Court, the requests were filed due to personal and health-related reasons. Despite the great and unusual number of reassigned judges in a very short time frame, the Court announced that, depending on the needs, new decisions on reassignment will follow in the coming period.²

2. Promotions for Judges who allegedly obstructed the Judicial Office’s Strike

During the month of September, the Trade Union of the Employees in Administration, Judicial Authorities and Associations of Citizens of Macedonia (UPOZ), published an announcement titled “If you’re against the strike, you can be elected a judge”.³ The Union reacted to the promotions of judges from lower to higher courts – a decision adopted by the Judicial Council on September 5th. According to UPOZ, among the promoted judges, the Union recognized names of judges which “stood out” during the courts’ strike. UPOZ contends that these judges intimidated union members despite the fact that they too used to be members of the Union, but left shortly before their promotion, which according to UPOZ raises suspicion about the reasons for leaving the Union.

3. Repeated Act of Coloring of the Primary Court Skopje 1 Building by the “Colorful Revolution”

On 25 September, the building of the Court was once again colored. The coloring was an expression of support for the work of SJO (Special Public Prosecution) despite the Court’s rejection of their proposals for detention and precautionary measures. In response, the Court stated that this act was “extremely shameful (...) and cowardly”. According to the President of the Court, the Court and the President himself consider all attacks, whether expressed in a verbal or in this kind of shameful manner, not as a pressure of any kind, but as a strengthening of their will to conduct the laws and respect human rights and freedoms. The President of the Court encouraged the perpetrators to report themselves to the

¹ <http://www.osskopje1.mk/Novosti.aspx?novost=545>

² <http://www.osskopje1.mk/Novosti.aspx?novost=549>

³ http://www.upoz.org.mk/index.php?option=com_content&view=article&id=406:2016-09-07-07-28-07&catid=1:latest-news



competent authorities, reassuring them that in the case of a court proceeding, they will be fully and fairly litigated.⁴

4. Judicial Council – Election of New Judges

On 5 September the Judicial Council of the Republic of Macedonia elected new judges and promoted 28 judges.⁵ This election is the third time that the Judicial Council conducts a procedure or elects court presidents or judges immediately before the anticipated early elections. It must be pointed out that the Judicial Council of the Republic of Macedonia in the previous period elected eight presidents of courts and announced the selection of ten judges on 23 February 2016 and seven judges on 6 April 2016, in both cases, just one day before the planned and prolonged dissolution of the Assembly. On 15 September, the Judicial Court published an Announcement for the election of Presidents in the Appellate Court in Stip and the Primary Court in Tetovo.⁶ This practice continually shows a failure to implement reform priorities regarding the de-politicization of the appointment and promotion of judges, of the evaluation, of the disciplinary proceedings and dismissals. The Judicial Council continues to elect presidents of courts and judges without applying any changes to the election system.

5. Council of Public Prosecutors – President Election

On 22 September, during a meeting of the new Council of Public Prosecutors, Mr. Petar Anevski was reelected president of the Council by secret ballot. The Helsinki Committee reacted publicly by pointing out that according to Article 8, paragraph 3 of the Law on the Council of Public Prosecutors,⁷ the Council President's mandate ends after two years without the right to reelection.⁸ The Helsinki Committee urged members of the Council of Public Prosecutors to schedule an emergency session in order to reconsider their illegal decision. After the public reaction, Mr. Anevski stated for the media that it was not true that he was elected illegally. According to him, even though he was Council President until August 2016, the re-election was a new, third term of the Council, which meant that he was not reelected in the same term.⁹ The reelection of Mr. Anevski represents a serious violation of the principle of legality. This decision calls into question the competence, independence, and impartiality of the members of the Council as well as its role to ensure and guarantee the independence of public prosecutors.

Impartiality

1. The “Transporter” Case

Following the appeal of Bitola's Mayor V.T. for an annulment of the house arrest measure imposed by the Primary Court in Skopje 1, the Appellate Court in Skopje granted the appeal, V.T. was released pending trial, and the house arrest measure was replaced with a precautionary measure – the obligation to report to the Primary Court Bitola every working Monday and Friday.¹⁰ SJO reacted to this decision by notifying that the Judicial Council included a judge who was promoted from the Primary Court Skopje 1 to the Appellate Court, and as a judge in a first instance proceeding, he had already decided on this case.¹¹ Considering the fact that such actions violate the principle of impartiality of judges, the SJO appealed to the Supreme Court about the Appellate Court's decision. The appeal of SJO was granted and the case was remanded for retrial.

⁴ <http://www.osskopje1.mk/Novosti.aspx?novost=548>

⁵ <http://www.ssrn.mk/Novosti.aspx?novost=450>

⁶ <http://www.ssrn.mk/Novosti.aspx?novost=453>

⁷ “Official Gazette of the Republic of Macedonia” no. 150/2007 and 100/2011

⁸ <http://www.mhc.org.mk/announcements/461#.WAYZvfl95Mw>

⁹ <http://fokus.mk/anevski-zakonski-sum-izbran-za-pretседател-na-sovetot-na-javni-obviniteli/>

¹⁰ <http://www.osskopje1.mk/Novosti.aspx?novost=544>

¹¹ <http://www.jonsk.mk/2016/09/20/20-09-2016/>



2. The Supreme Court meeting the Media and participating in Citizen Association Conference

On 7 September, the President of the Supreme Court Lidija Nedelkova and Judge Dr. Djemalli Saiti, president of the Association of Judges, held a meeting with editors and reporters of audio-visual, print media and portals. The discussion topic was the attitude of the judiciary toward the media in relation to the implementation of the principle of transparency in the work of the courts and the interest of objective, critical and more detailed information on the judiciary for increasing the citizen's trust. Proposals for cooperation were presented at the meeting.¹² Between 24 and 25 September, the President of the Supreme Court Lidija Nedelkova and Judge Djemali Saiti held lectures at the School for Young Criminal Studies' Graduates in Ohrid organized by the Association of Young Criminal Studies' Graduates of the Republic of Macedonia in cooperation with the Notary Chamber and Bailiffs Chamber.¹³ The participation is a positive step towards cooperation between the representatives of the judiciary, NGOs, and professional chambers. In the past few years, this type of cooperation virtually did not exist.

Important Court Cases

1. The "Zoran Bozinovski" Case

Two hearings were scheduled for the case KOK-79/16 in which the journalist Zoran Bozinovski was the defendant charged with "criminal association" and "espionage". The first hearing was scheduled for 1 September, and on the same date was scheduled the public session of the Appellate Court in Skopje regarding the case "Spy", in which Mr. Bozinovski was the defendant before the separation of the proceeding because of his unavailability to the law enforcement bodies. The hearing was delayed because the President of the Trial Chamber, despite requesting, had not received the evidence for the "Spy" case which was tried in the Appellate Court. The second hearing was scheduled for 27 September but was postponed because of the absence of the President of the Trial Chamber Sandra Krstik, who due to personal and family reasons requested to be transferred to another department of the court. According to the court, the new President of the Trial Chamber will be Lenka Davitkova.¹⁴ The journalist Bozinovski was never brought before the court, and media inform that he went on a hunger strike.

2. The "Divo Naselje" Case

On 30 September, the Primary Court Skopje 1 held the main hearing for the KOK.no.127/15 case, publicly known as the "Divo Naselje" case, in which the defendants are charged with criminal acts of "terrorism" and involvement in a "terrorist organization". After keeping the proceeding out of the public eye for several months due to the protection of witnesses, this hearing was opened.¹⁵ At the hearing, one witness was questioned. The questioning was halted due to the defense's argument that they had not received a prior statement by this witness from the Public Prosecutor's Office. The President of the Trial Chamber decided to postpone the examination for one of the future hearings. The hearing continued with the presentation of material evidence from the Public Prosecutor's Office.

3. The "Spy" Case

On 26 September, the Appellate Court Skopje revoked the detention order and persons with initials M. N. and C. D. who were unlawfully sentenced on the "Spy" case at the time, were released pending trial.¹⁶ These persons were detained in September 2013 and sentenced to four, i.e. six and a half years of prison by a first instance verdict. The defendants were found guilty as charged in October 2014, i.e. spent three years in detention, nearly two of which took for the appeal procedure at the Appellate Court Skopje.

¹² <http://www.vsrn.mk/Novosti.aspx>

¹³ <http://www.vsrn.mk/Novosti.aspx?novost=128>

¹⁴ <http://osskopje1.mk/Novosti.aspx?novost=549>

¹⁵ <http://www.osskopje1.mk/Novosti.aspx?novost=551>

¹⁶ <http://www.osskopje1.mk/Novosti.aspx?novost=550>



This, again, confirms that detention is used as a sentence instead of a security measure, and a large number of defendants are unnecessarily deprived of their freedom because of the ineffectiveness of the authorized institutions.

Special Public Prosecutor's Office

1. A six-month report on SJO's work

On 15 September, SJO sent a letter to the Assembly¹⁷ and the Council of Public Prosecutors¹⁸ informing them that the SJO is prepared to present the second six-month report of their work. The Prosecutor Katica Janeva urged the legislative body to adopt amendments to the Law on Witness Protection, so that the SJO could thoroughly investigate cases such as those of "Martin Neshkoski", "Monstrum", and "Sopot".

The report indicated that there had been an improvement in the technical and special work conditions. The SJO team includes 74 people. There was also an increase in the number of associates and experts. The SJO budget was sufficient for the time being. The work involved relistening and processing of the audio materials that reached a total number of 55.250 files by 15 September, i.e. 12% of the delivered materials in total. 38 preliminary proceedings have been initiated, 16 of which are based on the publicly posted audio recordings and 22 of which are unknown to the public. Difficulties with other organs of the state and state institutions are stressed out, while there is a particularly negative opinion regarding the attitude of the Primary Court Skopje 1.

Reviewing of the report began in the Assembly Committee on the political system and communities' relations. The Prosecutor Katica Janeva was answering to Members of Parliament's questions for four days (from 21-23 and 26 September). Questions unrelated to the report were being asked and several Members of Parliament acted incorrectly by asking the Prosecutor tendentious questions about her expertise and thus aiming to discredit her authority. On 26 September, due to work commitments, Prosecutor Janeva reported that she will no longer take part in hearings before the Committee, but that she would attend the plenary session.¹⁹

On 26 September the Prosecutor Janeva attended the Public Prosecutors Council session during which SJO's report was to be examined. Facing similar questions to those at the Assembly, especially from Council Member Zoran Sulejmanov, the Prosecutor left the session and stated that she would not respond to insults and questions unrelated to the report. Prosecutor Janeva also pointed out that she had been positively surprised by the Members of Council's interest in SJO's work and expressed hopes for an even deeper cooperation.

2. Cases of SJO

On 16 September, the Basic Court Skopje 1 scheduled a hearing on the case KOK-60/16, publicly known as the "Puch". The courtroom was closed to the public on the grounds that the hearing would not take place because one of the jurors was absent due to health-related reasons. According to the Court, the hearing of the case did not take place because one of the jurors gave a notice that morning that due to health-related reasons, he/she would not attend the trial.²⁰ The next hearing is scheduled for 1 November.

After months of delay, a public hearing for the case Kz.no.35 / 15 was held, publicly known as the "Spy" case. The hearing was held on 1st and 2nd September. All eighteen defendants and their attorneys

¹⁷ <http://www.jonsk.mk/2016/09/15/15-09-2016-2/>

¹⁸ <http://www.jonsk.mk/2016/09/15/15-09-2016/>

¹⁹ <http://www.jonsk.mk/2016/09/26/26-09-2016/>

²⁰ <http://www.osskopje1.mk/Novosti.aspx?novost=543>



challenged the first instance verdict by claiming it was the result of a politically constructed case. Prosecutor Elizabeta Josifovska from SJO's office stated that the verdict was lawful, but that the sentences were too harsh and suggested that a part of them should be converted into suspended sentences and reduced.

SJO filed a charge proposal for a new case regarding the lack of investigation for crimes related to the protests of the Veritas Association on the property of Centar Municipality in 2013.²¹ The case is taken from the Public Prosecutor's Office in Skopje and refers to the content of one of the published recordings of illegal wiretapping which raises suspicion of incitement to commit a violent crime against the public order and safety. Some of the witnesses involved in the case asked for protection, fearing for their own safety and the safety of their families. The charge was filed against 14 persons for the crime of "violence." Five people have been charged as instigators and nine as perpetrators. According to SJO, the motives of the instigators were lucrative, i.e. based on maintaining business interests of the party leaders and their partners. The Trial Chamber Judge made the case K.no. 1904/16 formal. The hearing is scheduled for 21 November.²²

3. Unauthorized E-mail Hack and Support by the "Colorful Revolution"

According to SJO, during the month of December 2015, there was a hack on their e-mail account followed by many steps for increasing the security.²³ This incident was not reported to authorities since, according to SJO, it did not cause any real damage. However, the posted e-mails on YouTube showed the purpose of the hack, and SJO decided to take measures in resolving the case. The Civil Movement "Colorful Revolution" became active once again and organized a protest in support of SJO's work. The protest was organized as a criticism towards the attitude of Members of Parliament during the presentation of SJO's work report at the Assembly of RM as well as the obstruction of SJO by the government.²⁴

Court Service – Temporary Suspension of the Strike

The UPOZ Trade Union announced that they do not see a serious and a responsible social partner in the current Council for Ministry of Justice and Judicial Budgetary Council regarding the failure to fulfill their requests.²⁵ Unwilling to expose its members to illegal punishment, to violence and threats, UPOZ made the decision for a temporary suspension of the strike at the courts. According to UPOZ, if the Judiciary takes actions which are opposed to the requests of the protesters in the coming period, the strike will be continued.

II FIGHT AGAINST CORRUPTION

The "Tank Parts" Case

The Supreme Court, following the request for an emergency review of the sentence for the "Tank Parts" case, decided to re-open the proceeding before the Primary Court Skopje 1.²⁶ Suspects are the persons with initials V.B (former Prime Minister) and T.K. The case involves alleged corruption regarding the abuse of tank parts from the Army of the Republic of Macedonia. The defendants were sentenced to

²¹ <http://www.jonsk.mk/2016/09/15/15-09-2016-3/>

²² <http://www.osskopje1.mk/Novosti.aspx?novost=555>

²³ <http://www.jonsk.mk/2016/09/29/неовластен-упад-во-електронската-пош/>

²⁴ <https://www.facebook.com/events/1678373299147443/>

²⁵ http://www.upoz.org.mk/index.php?option=com_content&view=article&id=407:2016-09-13-11-53-33&catid=1:latest-news

²⁶ <http://www.osskopje1.mk/Novosti.aspx?novost=552>



three years in prison in 2013, and the Appellate Court in Skopje reduced them to two years in 2014. The case is pending for more than 10 years.

The “Vault” Case

SJO reported to having filed charges for a new case called "Vault".²⁷ This case arises from the content of the wiretapped calls, some of which are public, and it refers to the suspicion of destroyed documents related to unauthorized wiretapping.²⁸ Seven persons have been criminally accused of “falsifying an official document”. The prime defendant in an official capacity in the Fifth Department at UBC illegally formed a Commission for the destruction of official documents and along with six members of the commission, destroyed 2,047 official documents, 22 of which refer to the systems of communication surveillance. The destruction was done contrary to all laws and regulations without any followed procedures by which the defendants burned the documents. A measure of detention was proposed for the prime defendant²⁹, but it was rejected by the Basic Court Skopje 1.³⁰ Precautionary measures were proposed against three people, but they were all rejected. SJO requested an exemption of Judge Lidija Petrovska who was assigned to this case, but the request was rejected³¹ by the Court which failed to schedule a hearing by the end of the month.

The “Erasmus” Case

The Public Prosecutor's Office for Organized Crime and Corruption submitted a draft to the Basic Court Skopje 1 for a new precautionary measure against six people accused in the case known to the public as "Erasmus".³² There are six defendants in this case, the majority of which are university professors suspects in criminal acts of "receiving a bribe", "receiving an award for unlawful influence", "abuse of official position and authority" and "giving a bribe". According to the Prosecutor's Office, despite the ongoing investigation, it is noted that the defendants continue to carry out their work activities and are in contact with students, i.e. with the plaintiffs. The Prosecutor's Office estimated that the defendants should be prohibited to perform work activities by court order until the final completion of the proceeding. The judge assigned to a previous proceeding accepted the proposal of B.S., D.J. and L.J. by imposing a precautionary measure “suspension from certain work activities related to the crime”.³³

III FUNDAMENTAL RIGHTS

Ombudsman

During the month of September, amendments to the Law on the Ombudsman were adopted.³⁴ The new solutions did not incorporate most of the expert group's recommendations headed by Reinhard Priebe. The only recommendation that was incorporated in the text of the law refers to the possibility of the "Ombudsman to become a friend of the court and be able to follow proceedings from beginning to end by their own personal initiative and at the request of the parties."

What is perhaps most concerning about the new legal solution is the impossibility of a truly independent and autonomous operation since the Ombudsman's budget will continue to be financially dependent on the Ministry of Finance, i.e. the government. Furthermore, the new legislation does not stipulate the independence of professional services' staff at the Ombudsman's office, i.e. they remain under state

²⁷ <http://www.jonsk.mk/2016/09/27/најава-за-прес-конференција/>

²⁸ <http://www.jonsk.mk/2016/09/28/28-09-2016/>

²⁹ <http://www.jonsk.mk/2016/09/28/поднесени-предлози-до-судот-за-случај/>

³⁰ <http://www.osskopje1.mk/Novosti.aspx?novost=559>

³¹ <http://www.osskopje1.mk/Novosti.aspx?novost=553>

³² <http://jorm.gov.mk/?p=3516>

³³ <http://www.osskopje1.mk/Novosti.aspx?novost=542>

³⁴ <http://www.sobranie.mk/downloaddocument.aspx?id=014a9e63-9b5f-45d7-869d-166c7277471c&t=pdf>



administration. This, in reality, means that the employment of any person by systematization, the Ombudsman will have to seek permission from the Ministry of Information Society and Administration and from the Ministry of Finance.

Freedom of Speech and Media Pluralism

During the month of September, the Temporary Committee for Monitoring Media Coverage commenced their work. One of the first activities of this ad hoc body was preparing monitoring reports of election media presentation on 18 programs.³⁵ The Temporary Commission filed a claim to the Agency for Audio and Audiovisual Media Services for initiating a misdemeanor proceeding and imposing a sanction – a warning against the First Channel of the Television Program Service of Macedonian Radio Television (MRT 1).

According to the Commission, the violation refers to the fact that within the period from 2 September to 5 September 2016, contrary to Article 75-d, paragraph 4 of the Electoral Code, MRT1 aired advertisements financed by the Budget of the Republic of Macedonia.³⁶ According to the Monitoring of television news prepared by the Institute of Communication Studies it is stated that: "Media image of political pluralism in Macedonia has improved compared to six months ago, which is particularly evident from the "softening" of the negative occurrences that had been very present: taking sides, propagandistic reporting, demonizing political persons, inserting political marketing as part of the news."³⁷

Discrimination

A month after the forced relocation of the Roma people who were placed in improvised barracks in Skopje Kale, during the month of September, state institutions failed in taking appropriate action to resolve this problem. Authorities shifted responsibility to the City of Skopje, the Ministry of Labor and Social Politics, and the Municipal Center for Social Work. Consequently, 121 persons were left with unresolved problems with housing, exercising social and health insurance rights, especially because of the fact that these people do not have personal documentation. The Helsinki Committee and six non-governmental organizations working in the field of improving the human rights of the Roma issued a list of demands that should be met by the State by taking actual measures for solving the problem of the relocated Roma families.³⁸

³⁵ First Report - http://www.avmu.mk/index.php?option=com_content&view=article&id=2898%3A2016-09-20-14-17-37&catid=88%3Asoopstenija-media&Itemid=313&lang=mk, Second Report -

http://www.avmu.mk/index.php?option=com_content&view=article&id=2908%3A-18-18-&catid=88%3Asoopstenija-media&Itemid=313&lang=mk

³⁶ http://www.avmu.mk/images/Predlog_za_postapuvanje_od_Privremenata_komisija.pdf

³⁷ <http://respublica.edu.mk/shestti-mesechen-izveshtai>

³⁸ <http://mhc.org.mk/announcements/455>

