

# MONTHLY BRIEF

October 2016

## Justice Governance for Growth Monitor (JuDGMeNT)

These monitoring reports are drafted within the framework of the project "Justice Governance for Growth Monitor by the SEE 2020 Strategy (JuDGMeNT)" implemented by the European Policy Institute with the financial support by the Regional Cooperation Council. The Project's objective is to establish structured civil society organisations mechanism for monitoring the implementation of the measures/instruments/priorities from the *Justice* dimension in compliance with the SEE 2020 Strategy.

These measures are the following:

P.1. Improve efficiency and competence: review the quality, efficiency and competence of judges and the courts

P.2. Improve judicial cooperation in free access to information, cross border enforcement and cross-border proceedings in bankruptcy and take-over and mergers

P.3. Support ADR: Introduce or improve the legislation on ADR and enable proper legal and institutional cooperation with the judiciary and the enforcement system

For more information see: [http://www.epi.org.mk/newsDetail\\_mk.php?nwsid=131](http://www.epi.org.mk/newsDetail_mk.php?nwsid=131).

## Quality, competence and efficiency of judges and judiciary

### Supreme Court of the Republic of Macedonia

The Supreme Court of the Republic of Macedonia, the Association of Judges of the Republic of Macedonia and the CEELI Institute from Prague organized an International Conference on independence of the judiciary. The conference covered the following topics: challenges, best practices and experiences of an independent judiciary in terms of legislative, financial and functional independence; support to the positive perception of the judiciary and respect of its independence; continuing education and judicial ethics; transparent judiciary and relations with the media. The conference gathered presidents of supreme, appellate, trial courts, members of the associations of judges and legal experts from Macedonia, Albania, Serbia, Bosnia and Herzegovina, Kosovo, Georgia, Lithuania, Poland, Slovenia, Croatia, the Czech Republic and the United States.<sup>1</sup>

### The Judicial Council of the RM

During October, the Judicial Council held two meetings where among others things, it established the Commission for amending and supplementing the Rules of Procedure of the Judicial Council of the Republic and the Commission for amending and supplementing the Regulation for initiating and establishing permanent loss of ability to perform judicial office. Furthermore, the Chamber ruled on the termination of judicial office of one (1) judge due to reaching the retirement age of 64, on the election of one (1) judge among the candidates from the Academy of Judges and Public Prosecutors, on a complaint by a judge, on the

<sup>1</sup> <http://www.vsrn.mk/Novosti.aspx?novost=129>



termination of office of a judge - juror in the Basic Court Skopje 1 Skopje upon a list proposed by the President of the Court and gave its consent to a judge of the Basic Court in Kavadarci to lecture at the University. Moreover, they reviewed and approved the reports on the work of courts in the country for the second quarter of 2016.<sup>2</sup>

On 14.10.2016, the Council of RM published an announcement for the election of the President of the Supreme Court of the Republic of Macedonia, for the election of President of the Basic Court Skopje 1, and the election of one (1) judge of the Appellate Court Bitola in the civil area.

On 10.10.2016 the Judicial Council of the Republic held a press conference on the "Protection of the independence of the judiciary and preserving the reputation and dignity of the judges." The purpose of this press conference, as announced by the head of the Council was to preserve the integrity, and raise public awareness on the current pressures and interference in the judiciary. It was stressed that the media pressured the judiciary. The President of the Council said that they felt threatened by SPP after it summoned five judges to be heard by the Administrative Court.<sup>3</sup> Actually, this is not the first case of allegations against judges. Previously, the Prosecution for organized crime accused and arrested a dozen of judges, but the Judicial Council didn't react at that time.

Delegations of the Judicial Council last month conducted a study visits to Oslo, Norway, and Vilnius, Lithuania, as part of a larger delegation of competent institutions.

### Academy of judges and public prosecutors

Until this moment, there is no information about the commencement of the training of the sixth generation of judges and public prosecutors.

- The Academy of Judges and Public Prosecutors during October organized several trainings within the mandatory continuous training for judges and prosecutors.<sup>4</sup> Namely, a series of workshops were organized on the following topics: "Legal terminology and use of spell check in judicial decisions and presentation of e-database of regulations and publications of the Official Gazette"; "Criteria for determining compensation under the Law on Civil Liability for Defamation / Media Law and liability for defamation over the Internet"; Practical application of the Law on deciding and determining the severity of the sentence", "International co-operation in civil matters"; "Use of judicial rulebook"; "Using databases of European case law on human rights" .The following trainings were organized "Investigative actions/effective investigation" and "The burden of proof/evidence and complaints" (in cooperation with the OSCE Mission to Skopje), training on the Practical guide for judges, court staff, prosecutors and lawyers on current case law of the European Court of Human Rights in view of article 5 of the European Convention for the protection of human rights and fundamental freedoms" and Training in cooperation with the Ministry of Justice aimed at better preparation of cases before the

<sup>2</sup> Press release from the 235<sup>th</sup> session on 7.10.2016 <http://www.ssrn.mk/Novosti.aspx?novost=459>

<sup>3</sup> Press release from the press conference on 20.10.2016,

<http://www.ssrn.mk/Novosti.aspx?novost=464> ;

Karadzovski complained about media pressure on the court <http://meta.mk/karadhovski-se-pozhali-na-pritisok-od-mediumite-vrz-sudot/>

<sup>4</sup> <http://www.jpacademy.gov.mk/upload/KATALOZI/PLAN%20NA%20OBUKI%20%209-12%202016%20123.pdf>

Court and the admissibility of the appeal, held as part of the Twinning project "Strengthening the rule of law" between the Republic of Latvia and the Republic of Macedonia;

### Monitoring of court proceedings<sup>5</sup>

During October, the courts worked as usual. During this period the SPP launched two new investigations: "Toplik"<sup>6</sup> and "Tenders".<sup>7</sup> The Basic Court Skopje 1 summoned the two suspects in the case "tender" and after hearing by the preliminary procedure judge with a decision of 28.10.2016 rejected the proposal of the SPP to set precaution measures as unfounded<sup>8</sup>. The court conducted two hearings for the case "Divo Naselje"<sup>9</sup> where evidence were presented, while all subsequent hearings during the month of October were postponed in order to provide sufficient time for the defence to examine the evidence, and the last two hearings were postponed because of the public prosecutor was absent.

## Judicial cooperation in the area of free access to information, implementing cross-border enforcement and cross-border bankruptcy, take-over and merging procedures

On 3 October 2016 the political party Levica held a press conference on the operation of BEG, the heating operator in Macedonia. Levica tried to reveal the ownership structure of BEG as a factor additionally adding, according to them, to the illegal abuse of many consumers of BEG. This is another example of monitoring the behaviour of a company that was established in Macedonia as a result of a cross-border business transactions. As it has

<sup>5</sup> From the regular monitoring of the court proceedings of the Coalition All for Fair Trials

<sup>6</sup> The "Toplik" case includes six persons suspected that through abuse of office and violation of the Public Procurement Act they committed criminal acts which damaged the budget with an amount of 1 million and 44,000 euro. For more information <http://www.akademik.mk/toplik-i-tender-novi-predmeti-na-sjo-za-zloupotreba-na-sluzhbena-polozhba-i-ovlastuvana-vo-ministerstvoto-za-transport-i-vrski-i-ministerstvoto-za-kultura/>

<sup>7</sup> In the case "Tender" the first suspect at a senior position in the Ministry of Culture, disregarding the Law on Public Procurement and without conducting a public bidding, concluded a contract with the contractor for additional construction works on the Museum of VMRO. For more information <http://www.akademik.mk/toplik-i-tender-novi-predmeti-na-sjo-za-zloupotreba-na-sluzhbena-polozhba-i-ovlastuvana-vo-ministerstvoto-za-transport-i-vrski-i-ministerstvoto-za-kultura/>

<sup>8</sup> 31.10.2016 Press release - <http://osskopje1.mk/Novosti.aspx?novost=571>

<sup>9</sup> The case "Divo Naselje" is conducted against 29 people, part of the so-called "Kumanovo group" accused of terrorism and being terrorist organization regarding the events of 9 and 10 May at Divo Naselje in Kumanovo. The case was later merged with the case "Molnja" against eight persons accused of helping the group of Divo Naselje.

On 9 and 10 May 2015 an armed group clashed with security forces at Divo Naselje in Kumanovo. Eight police officer of the special units of the Interior Ministry were killed, and forty were injured. Ten people, members of the armed group were also killed. For more information <http://prizma.birn.eu.com/%D0%BC%D0%BA/%D1%81%D1%82%D0%BE%D1%80%D0%B8%D0%B8/%D0%BF%D0%BE%D1%87%D0%BD%D1%83%D0%B2%D0%B0-%D1%81%D1%83%D0%B4%D0%B5%D1%9A%D0%B5%D1%82%D0%BE-%D0%B7%D0%B0-%D0%BA%D1%83%D0%BC%D0%B0%D0%BD%D0%BE%D0%B2%D1%81%D0%BA%D0%BE-%D0%B4%D0%B8%D0%B2%D0%BE-%D0%BD%D0%B0%D1%81%D0%B5%D1%99%D0%B5>

been established so far, the monitoring consists of protection of the specific interests of a certain group of stakeholders, in this case the consumers of the Company.<sup>10</sup>

## Support to ADR: Introduction or improvement of the legal framework for ADR and providing adequate legal and institutional cooperation with the judicial system and the implementation system

During the month of October, licensed mediators continued with their activities of mediation,<sup>11</sup> as an ADR method, in cases initiated at the request of interested parties, and pursuant to amendments to the Law on Civil Procedure according to which, for certain commercial disputes attempted mediation is mandatory. It is important to note that two mediation proceedings were initiated voluntarily. The initiation of such non-mandatory mediation proceedings is certainly a positive step towards the promotion of mediation indicating a change in the perception of citizens regarding this form of alternative dispute resolution in a positive direction.

During the month of October, 10 mediation cases were completed. Six of them were included with an agreement resolving the dispute, in 1 case active mediation was initiated and then suspended due to the withdrawal of one of the parties and the procedure failed, while in 3 cases, the mediation ended with attempt, which means that the opposite party didn't respond positively to the invitation to resolve the dispute through mediation.<sup>12</sup>

The mediators held several consultative meetings in the premises of the Association for Support of Mediation within the Economic Chamber of Macedonia for the organization of promotional events before the business sector in order to bring mediation closer to legal entities and it was agreed to hold five-day free seminars in several cities across Macedonia in the coming period.<sup>13</sup>

The Ministry of Justice on 10.10.2016, announced the examination for mediators in the November session.<sup>14</sup> A total of 21 candidates applied, which indicates the high interest in acquiring a mediator license.

With regard to other activities in October, it is worth mentioning the participation of several licensed mediators from Macedonia at the First International Conference of mediators from South East Europe "Mediation and development of communication" held on 22.10.2016 in Zagreb.<sup>15</sup> The conference was attended by mediators from Croatia, Macedonia, Bosnia and Herzegovina and Serbia.<sup>16</sup> Conference participants from various

<sup>10</sup> <http://www.brif.mk/parite-od-beg-odat-na-privatni-smetki-na-vmro-dpmne-vo-kipar-obvini-levitsa/>

<sup>11</sup> [http://www.justice.gov.mk/documents/medijatori\\_2.pdf](http://www.justice.gov.mk/documents/medijatori_2.pdf)

<sup>12</sup> Data from the register of mediators and information from the mediators

<sup>13</sup> [http://www.mchamber.mk/\(S\(f4kszh45tlpxrd32madzmi55\)\)/default.aspx?IId=1&MIId=55&evId=34008](http://www.mchamber.mk/(S(f4kszh45tlpxrd32madzmi55))/default.aspx?IId=1&MIId=55&evId=34008)

<sup>14</sup> <http://www.justice.gov.mk/documents/ispit%20za%20medijatori%20noemvriska2016.pdf>

<sup>15</sup> [www.medijator.com](http://www.medijator.com)

<sup>16</sup> <http://medijator.com/program-1-konferencije-medijatora-jie-zagreb-2016/>

countries reached mutual agreement on the formation and registration of the Association of Mediators of Southeast Europe which will have its headquarters in Zagreb, Croatia.

Three conferences were held in the field of peaceful settlement of labor disputes, during the month of October 2016, two international and one national. Namely, in Ohrid from 18 to 19 October 2016 an international conference was organized titled "Sub-regional high-level conference on effective mechanisms for labor dispute resolution," organized by the UN International Labor Organization and an EU funded project. This conference was attended by directors of agencies, conciliators and arbitrators from Macedonia, Bulgaria, Serbia, Montenegro, Serbia, Kosovo, Albania and Hungary. It was established that there are 41 licensed arbitrators and conciliators in the country..

The first national conference of arbitrators and conciliators in labor disputes in the Republic of Macedonia, was organized on 19 October 2016. The conference was titled "*Current issues of reconciliation and arbitration in the Republic of Macedonia*".<sup>17</sup> The conference emphasized the need for greater consistency between the Law on Peaceful Settlement of Labor Disputes, Law on Mediation in RM and Labor Law.

The "First Annual Meeting of the sub-regional network of agencies for amicable resolution of labor disputes", was organized in Ohrid on 20.10.2016. The participants focused on several topics related to labor disputes, and gave an overview of the regional regulatory framework of peaceful settlement of labor disputes in the region, more precisely in Macedonia, Serbia, Republika Srpska, Montenegro and Bulgaria. The system of virtual platform "ESAP" which should serve as a database of the region regarding a successful resolution of labor disputes.

All three conferences received media coverage, including short national and local TV interviews with participants.

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<sup>17</sup> Report of the Association of conciliators and arbitrators in labor disputes in the Republic of Macedonia