



Monitoring Brief for November 2016 Following Chapter 23 – Judiciary, Fight against Corruption, and Fundamental Rights

I JUDICIARY

Independence

1. Primary Court Skopje 1 – Skopje, Establishing a Case Based on SJO’s Proposal to Indict

The presiding judge for the proposal by the Prosecution of criminal acts related to and arising from independent communication monitoring (SJO) against 7 persons as suspects of the criminal act “Falsifying an official document”, after receiving the proposal, established a case and set a hearing date on 28.11.2016. Immediately after submitting the proposal to indict, SJO submitted a request for recusal of the assigned judge. According to the Prosecutor, the reason for requesting a recusal was the fact that the judge’s brother-in-law was employed by a company which collaborated with the company Finzi. The Finzi Company is under investigation in another SJO case – “Trezor”, through which the controversial supply of equipment for UBK (Administration for Security and Counterintelligence) was conducted. The request for recusal was denied by the President of the Court, after which the SJO submitted a complaint at the Appellate Court Skopje as well. This court confirmed the decision made by the first instance court.¹

2. Primary Court Skopje 1 – President Panchevski’s Inappropriate Behavior

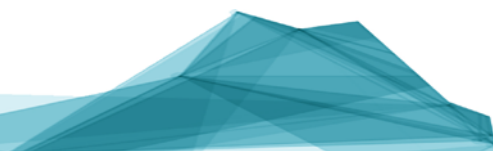
One day after the publishing of the EC’s report in which it had been noted that Macedonia has regressed in the implementation of judicial reforms, the Primary Court Skopje 1 issued a report² regarding the criminal charges against President Panchevski brought by Ivan Djolev, a judge in the aforementioned court. The report caused public reactions based on the conclusion that this move reflected how President Panchevski seriously compromised the integrity and the independence of the court. The report includes President Panchevski’s personal statement which informs the public that he fully refutes the allegations of committing the criminal act of “Receiving bribe for illegal influence” as unfounded and filed a criminal charge against Judge Djolev for “False reporting of a crime”.

3. A Criminal Charge against the Mayor of Center Municipality, Andrej Zernovski

The Public Prosecutor’s Office in Skopje has launched an investigation against Andrej Zernovski for the criminal act of “Abuse of Position and Authority in the Workplace” and of “Non-execution of a court decision”. The charges against the mayor were drafted on 2.11.2016, the same day as the destruction of the President of the Criminal Court Vladimir Panchevski’s illegal construction. There were severe reactions from the Mayor’s Office followed by a post of a text on the municipality’s webpage titled “VMRO DPMNE Takes Revenge on Zernovski through the Judiciary”. In the municipality’s text, it is stated that the case is politically motivated, and this statement has been denied by the Public Prosecutor’s Office of RM. According to JORM (Public Prosecutor’s Office of RM), the criminal charges were filed by a legal entity against the Mayor of the Center Municipality on October 26, 2016. The criminal charges refer to the actions of the Center Municipality upon a request for confirmation of the

¹ <http://www.osskopje1.mk/Novosti.aspx?novost=574>

² <http://www.osskopje1.mk/Novosti.aspx?novost=580>





legal status of an illegally constructed building, which has no relation whatsoever with another case discussed in the previous days.³

4. Katica Janeva's Denial of Accusation for Being a Political Party Member

Special Public Prosecutor Katica Janeva denied the publically shared accusation that she was a member of the political party SDSM. Social media and some television channels were presented with payment slips for her membership in the SDSM party. Janeva strongly denied the authenticity of the documents and urged authorized institutions to act accordingly in response to the abuse of her personal information.⁴

5. Judicial Council – Temporary Reassignment of Judicial Function of Judges

The Judicial Council of the Republic of Macedonia reported that on the 237th session, a decision for reassignment of judicial functions was made for 5 judges (three from Kumanovo, one from Tetovo and one from Negotino) to the Primary Court Skopje 1– Skopje, up to a period of 1 year beginning on the day of reassignment.⁵

Impartiality

1. Rescheduling a Trial Hearing Due to Absence of a Defendant's Lawyer

The Primary Court Skopje 1 issued a statement informing the public that the lawyer Nikola Dodevski sent a written notification to the Court stating that the lawyer of the second defendant Mile Janakievski (former Minister of Transport and Communications) in the case K.no. 1904/16 in reference to the violence in Centar Municipality, Nikola Dodevski, is unable to participate in the trial hearing because of a two-day workshop engagement which was scheduled before the hearing and requested a for the hearing to be rescheduled. The Court accepted his request and rescheduled the trial hearing for 16.12.2016, and notified the concerned parties.⁶

2. Rejection of SJO's Complaints for Establishing Alternative Measures

Basic Court Skopje 1 continued its practice of obstructing SJO's work, and therefore, the Criminal Chamber of the Department of Organized Crime and Corruption, acting upon the SJO's complaint against a judge's decision on a prior proceeding from 04.11.2016 for establishing precaution measures against three persons involved in SJO's case publicly known as "Trezor", adopted a decision in a hearing which confirmed judge's decision on the prior proceeding and rejected SJO's complaint for establishing precaution measures for all three persons as unfounded.⁷ Furthermore, the Criminal Chamber of this Court, acting on the SJO's complaint submitted against a judge's decision on a prior proceeding from 28.10.2016, in the SJO's case known as "Tenderi", adopted a decision which rejected the complaint by the prosecutor and confirmed the judge's decision in the prior proceeding.⁸ In the decision, a judge in a prior proceeding rejected the proposal for precaution measurements against two persons.

3. Dismissed Criminal Charges against the President of the Primary Court Skopje 1 – Skopje

³ <http://jorm.gov.mk/?p=3662>

⁴ <http://www.jonsk.mk/2016/11/15/катица-јанева-нема-никаква-поврзанос/>

⁵ <http://www.ssrn.mk/Novosti.aspx?novost=466>

⁶ <http://www.osskopje1.mk/Novosti.aspx?novost=582>

⁷ <http://www.osskopje1.mk/Novosti.aspx?novost=584>

⁸ <http://www.osskopje1.mk/Novosti.aspx?novost=576>





The Basic Public Prosecutor's Office for the Prosecution of Corruption and Organized Crime dismissed the criminal charge for receiving a bribe for illegal influence against the President of the Primary Court Skopje 1 brought by a judge in the same court as unfounded. This charge provoked stormy reactions among the public, especially after the scandalous report issued by the Court which contained personal defensive statements by President Panchevski upon the brought charges. According to the Basic Public Prosecutor, the actions performed by the charged person did not actually or supposedly influence in any way the actions of the investigating judge assigned to the investigation, because the actions did not include an order. The given Explanation provides a guidance to a more effective and quick completion of a case investigation accordingly to law, one which has not been completed for many years. The Prosecutor's Office reported that a charge was brought against the applicant for false reporting of a crime.⁹

Competence

1. Supreme Court of RM – Urging Promptness of Court Services in Issuing Certificates of Candidacy for Members of Parliament

The Supreme Court of the Republic of Macedonia sent a letter to the Primary Court Skopje 1 – Skopje to notify the President of the Court that the President of the Supreme Court received an urgency letter from the Head of the Election Quarters of the SDSM party, which requires from the first instance court an official and timely issuance of Certificates of Good Conduct for candidates on lists for Members of Parliament for the purposes of the upcoming early parliamentary elections.¹⁰ The Primary Court Skopje 1 reported that additional office hours had been implemented for the purpose of issuing the certificates and that the Court's work was being unnecessarily politicized and the promptness of the court services was abused with the accusations that the Court is obstructing the elections. In a previous report¹¹, the Court had advised citizens to apply for issuance of the certificates in a timely manner and that the certificates would be prepared within 5 to 7 days, depending on the number of applications.

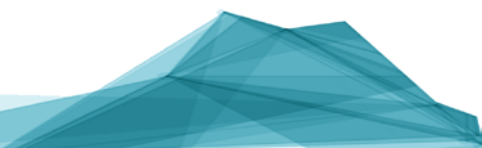
2. Labor Inspection at the Primary Court Skopje 1 and a Complaint by 11 Court Officials

The Labor Inspection investigated the allegations by one court official who claimed that he had been degraded in office. Contrary to those claims, the Court explained to the inspectors that the court official had been promoted. Nevertheless, the actions of the officials, according to the Court, led to the disruption of interpersonal relationships which consequently initiated disciplinary proceedings which may result in criminal liability. The official claimed that the dispute between President Panchevski and him is because he participated in the "Colorful Revolution" (Mac: Шарена револуција). Because of that, according to the official, he did not receive any mail, and after some time he was transferred to the Department of Sanctions after an order and relocated to another building. 11 court officials employed at the Primary Court Skopje 1 asked the Judicial Council and the Council for Determination of Facts to take measures against the President of the Court Vladimir Panchevski. According to the Court, four of them withdrew their signatures because they were unaware of what they were signing. According to the President of the Judicial Council, the developments in the Criminal Court are dictated by the upcoming election of a new president. The criminal charges against President Panchevski brought by Judge Djolev, the alleged illegal building

⁹ <http://jorm.gov.mk/?p=3701>

¹⁰ <http://www.osskopje1.mk/Novosti.aspx?novost=579>

¹¹ <http://osskopje1.mk/Novosti.aspx?novost=578>





construction in the center of Skopje owned by President Panchevski, as well as the revolt of the judges and court officials, according to Karadjovski will affect the elections.¹²

Important Court Cases

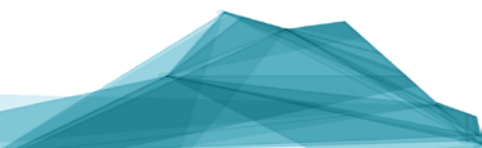
The “Puch” Case

On November 1st, a hearing for the case publicly known as “Puch” was scheduled, but it was delayed once again. This time, according to the President of the Trial Chamber Ljubinka Bashevka, the reason for the delay was that two new lay judges who had been appointed had not yet acquired security clearance certificates. Special Public Prosecutor Katica Janeva asked other judges to show their security clearances, as to avoid repeated postponement of proceedings in the future for the same reason. The President of the Chamber denied this request and stated that the Special Public Prosecutor has no right to demand that from the Chamber. Once the Special Prosecutor continued persistently with the demand, she was warned not to disturb the order in the courtroom. On the question asked by the defendant Zoran Zaev’s lawyer, Filip Medarski, whether a subpoena was sent to the witness Nikola Gruevski, President Bashevka repeatedly refused to answer, and finally said that the witness was not subpoenaed because the procedural conditions for holding a hearing had not been met anyways. The moment the defendant Zoran Zaev wanted to address to the Chamber, President Bashevka followed by other lay judges, turned away and walked out of the courtroom. The defendant was not given the floor and he was not allowed to ask the question which causes a substantial violation of the criminal proceedings provisions. The proceeding has been postponed indefinitely.

The "Zoran Bozinovski" Case

On November 10th, the main hearing was held for the case in which the journalist Zoran Bozinovski is the defendant. In his statement before the court, Bozinovski said the case against him was a political persecution ordered by former Prime Minister Nikola Gruevski and created by Sasho Mijalkov, former Director of Administration for Security and Counterintelligence and Tony Jakimovski, the Head of his Cabinet. He named the following persons as "operational executives" in the process: former Interior Minister Gordana Jankulovska, Attorney General Marko Zvrlevski, prosecutor Lile Stefanova, judges Tatjana Mihailova, Gjoko Ristov Sandra Krstikj; and he called the President of the Trial Chamber Lenka Davitkova a "suicidal judge". He added that the prosecution against him by VMRO – DPMNE happened in two stages, i.e. the first one was in 2002 when he was beaten and suffered severe injuries in order to be silenced, and the second one when they tried to bribe him. He stated that the prosecution did not provide evidence against him and that the entire indictment is based on the statements of three witnesses. In reference to the aforementioned, he explained that the statement given by the witness Vancho Shehtanski was actually in favor of his defense, and he has never met the witness Dimitar Dimovski before, while the witness statement by Mincho Jordanov was controversial because, supposedly, he voluntarily give the defendant a sum of money on five different occasions in the total amount of 30,500 euros. Bozinovski also pointed that this case should be under the jurisdiction of the Special Public Prosecutor's Office, which is responsible for the “Spy” case, in which he himself was defendant before the proceedings against him were separated. During the main hearing, Judge Lenka Davitkovska fined the defendant on two separate occasions with a total sum of 2,000 euros for offending the court.

¹² <http://www.osskopje1.mk/Novosti.aspx?novost=583>





The “Fortress 2” Case

On November 28th, a hearing on the case generally known as “Fortress 2” was scheduled. In this case, former Head of the Fifth Administration Goran Grujovski and another 6 UBK employees appeared as defendants charged by the Special Prosecutor's Office with criminal charges for destruction of official documentation related to illegal wiretapping. After a grueling dispute between SJO prosecutors Lenche Ristoska and Trajche Pelivanov, President of the Trial Chamber Lidija Petrovska and defendants’ lawyer on whether the classified evidence proposed by SJO can be used in the proceedings, or whether they should be declassified, the President of the Chamber obliged the SJO to provide a permit from the authority that produced the classified information offered as evidence, i.e. from UBK (Administration for Security and Counterintelligence), the evidence to be declassified. The Prosecutors insisted that there are no legal obstacles to the use of such evidence. The accused Goran Grujovski’s lawyer, Nikola Dodevski, asked the court to dismiss the evidence as unusable because SJO offered them without acquiring a prior permission from UBK for their use. The next hearing is scheduled for January 17th.

II FIGHT AGAINST CORRUPTION

1. SJO Launches a New Investigation Called “Target”

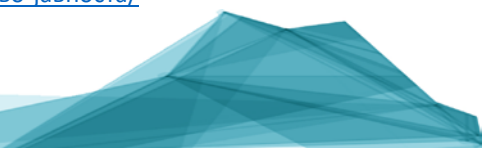
At a public press conference, SJO presented a new investigation under the name "Target" which would reveal the persons responsible and the manner in which the illegal wiretapping was conducted, whose disclosure by the opposing political party is the main cause for the ongoing social crisis in Macedonia. SJO stressed that they were in possession of sufficient material and verbal evidence to open an investigation under the name “Target” for illegal wiretapping in the period from 2008 to 2015 when, according to SJO, at least 5,827 telephone numbers were wiretapped, for which there are 10 suspects who were in managerial positions or employees of UBK. The Prosecutors stated that the most relevant question which has to be answered is who, and with what means and methods, and eventually, with what motives, conducted the illegal wiretapping. According to the evidence, there is reasonable suspicion that the first suspect who had a managing position at UBK illegally wiretapped conversations for no specific investigative measures. According to SJO, for the second suspect who is a head of department at UBK, there is a reasonable suspicion that he, together with the primary suspect, as well as on his own, took advantage of the official position and, contrary to the rules on interception of communications, organized the process of illegal surveillance by abusing the potential of UBK. As for the third suspect, who is a head of a department at the UBK, there is a suspicion that she abused her position under the direction of the second suspect by forwarding phone numbers which were entered into the system without a court order and only with a warrant for interception of communications. According to Prosecutor Fetaj, the attack on human rights and freedoms is the strongest attack on a civilized democratic society and that it was time that society responded.¹³

2. SJO – Requesting the Case Publicly Known as “Sopot”

SJO submitted a request to the Public Prosecutor's Office for Organized Crime and Corruption for gaining access to the case publicly known as "Sopot". The case has been requested with the purpose of deciding on whether this case falls within the jurisdiction of the SJO, given that a conversation obtained from illegally monitored conversations had been made public¹⁴. SJO explained that the charges brought against the defendants in the “Sopot” case are connected to the contents and the

¹³ <http://www.jonsk.mk/2016/11/18/izjava-od-pres-konferencija/>

¹⁴ <http://www.jonsk.mk/2016/11/24/pobaran-predmetot-poznat-vo-javnosta/>





criminal charges which arise from the contents of the conversation related to the aforementioned case, which gives them legal right to require this case. SJO pointed that the period from 2008 to 2015 stipulated in the Law on SJO (Law on Special Public Prosecutor) refers exclusively to the period of illegally monitored communications, and not to the period when a specific event took place.¹⁵

3. SJO – Request for Additional Information from a Telecommunication Operator

Following a decision from the Criminal Chamber at the Department for Organized Crime and Corruption in the Basic Court Skopje 1, the judge's disapproval given for a prior proceeding in regard to SJO's request for issuance of a search order for computer systems and data in a telecommunication operator, has been accepted. In the explanation, the panel points that the order is vague, imprecise and too general and the location and description of the search are not clearly stated, there are no given address, sector or department for the search, and there is no specific description of the type of devices – computers. SJO explained that the request for issuance of a search order contained the systems' name, i.e. the data carriers, and it was also specifically stated which data are required from which telecommunication operator. In order to act upon the Court's requirements, a request has been sent to the telecommunication operator for an immediate supplying of data which, according to the Court, are necessary for the issuance of a search order of a computer system and computer data.¹⁶

III FUNDAMENTAL RIGHTS

The Rule of Law

During November, of greater importance were the changes in the political environment in Macedonian society, considering the fact that early parliamentary elections were being organized, the entry into the election campaign and the engagement of the institutions responsible for conducting fair and democratic elections. Interior Minister Oliver Spasov stressed the need for preventing every kind of pressure on citizens related to the upcoming elections. In this regard, Minister Spasov stated the following: "None of the police officers should engage in any party campaign nor perform any pressure. Also, all ranks, starting from a head of the department to the lowest ranks, should take any abuse by the state administration and directors of regional offices very seriously, and the occurrence of such a case should be prosecuted." Given past experience with police work during elections, when the public was informed via the so-called "bombs", Minister Spasov's statement intended to appeal to the "professional conduct on the part of MVR officers on one side and their collaboration with citizens on the other."¹⁷

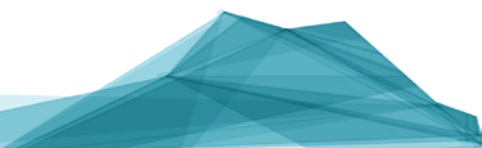
Freedom of Speech and Media Pluralism

The election period had an impact on the media work as well, as attempts for regulation by the Agency for Audio and Audiovisual Media Services incorporated 18 program services, while the monitoring was carried out from November 11th to November 20th, 2016. Through monitoring, the Agency determined a violation of the legal provisions for paid political advertising by the Commercial Broadcasting Company Nova Television, LLC Sp. Skopje, the Commercial Broadcasting Company Alsat-M, LLC Skopje,

¹⁵ <http://www.jonsk.mk/2016/11/29/случајот-сопот-поврзан-со-незакон/>

¹⁶ <http://www.jonsk.mk/2016/11/24/побарани-дополнителни-информации-од/>

¹⁷ <http://www.mvr.gov.mk/vest/3007>





and the Commercial Broadcasting Company Radio Kanal 77, LLC Sp. Shtip.¹⁸ In addition, the Agency received submitted proposals for action by the Temporary Commission for Monitoring Media Presentation, i.e. three requests for initiating misdemeanor proceedings for imposing a sanction – a fine, and five requests for initiating misdemeanor proceedings for imposing sanction – a warning. The violation of the Electoral Code and the misdemeanor proceedings for imposing sanctions concern: TV Nova LLC Sp., TV Sitel LLC Sp., TV Alfa LLC Sp., a TV 24 Vesti LLC Sp., Shtip.¹⁹

The issue that was imposed during the election period and media presentation, and was not associated with the programs of the parties, i.e. was used for propaganda purposes, was the topic of "bilingualism" or "federalization" of the Republic of Macedonia. These topics were used for discrediting political opponents, and in the conclusions of the report on Monitoring Democracy in Macedonia prepared by the Institute of Communication Studies was noted the following: "The television programs Sitel, TV Nova, Kanal 5 and Alfa reported on this topic ("bilingualism") only in the sense that the opposing party's leader finds a solution for the issue with language use in federalization of the country, which corresponds with VMRO-DPMNE attitudes. In these reports, the opposition never had a chance to present their arguments, and they only contained statements by party members which were incorporated in the specific context (...). Favoritism towards the VMRO-DPMNE party demonstrated by these televisions was carried out by a different approach in covering the election campaign and, in several instances, in the uncritical reports of interference between the party and the state, such as the party leader Nikola Gruevski informing on upcoming foreign investments."²⁰

Ombudsman

A number of citizen associations working in the area of defending human rights reported use of excessive force during the protests that took place in Skopje during the so-called "Colorful Revolution". In this regard, it is important that the Ombudsman, Idjet Memeti submitted a proposal to the Basic Public Prosecutor's Office in Skopje (Mac: OJO) for establishing criminal liability against four police officers and against other unknown Ministry of Interior officials for torture and other cruel, inhumane or degrading treatment and punishment inflicted upon the injured Gorjan Atanasov, Goran Naumovski Bahri Redjepi and Dimitrija Angielkovski, some of which were participants, and some were reporters protesting at the "Colorful Revolution" in Skopje. On thus proposal, the Ombudsman pointed out that: "The indicated police officers in MVR, indiscriminately, used means of force towards some protestors: with tonfa, by hitting with truncheons and shields, and tying hands with handcuffs."²¹

Discrimination

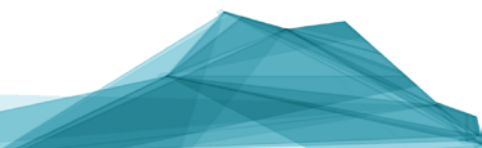
In November, 40 complaints were submitted against the textbook titled "Society" for 4th-grade students by mothers who live in single-parent families, extra-marital relationships and marriages, but who believe that students should not be exposed to the discriminatory content. The complaints were supported by 8 citizen associations and sent to the Ombudsman and the State Education Inspectorate. The case of this textbook became public in October when social networks announced that the Ministry

¹⁸ http://www.avmu.mk/index.php?option=com_content&view=article&id=3009%3A-77&catid=103%3Astari-info-srd-srd&lang=mk

¹⁹ http://www.avmu.mk/index.php?option=com_content&view=article&id=3013%3A-24-&catid=103%3Astari-info-srd-srd&lang=mk

²⁰ <http://sdk.mk/index.php/makedonija/krivichno-gonene-na-politsajsite-za-machene-na-sharenite-revolutsioneri-bara-ombudsmanot/>

²¹ <http://sdk.mk/index.php/makedonija/krivichno-gonene-na-politsajsite-za-machene-na-sharenite-revolutsioneri-bara-ombudsmanot/>





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of Education issued the textbook "Society" for 4th-grade students containing discriminatory material based on family and marital status, which excludes many groups of parents.²² In the complaints, the Ombudsman and the State Educational Inspectorate are requested to identify discrimination and to instruct the Ministry of Education to initiate a procedure for the issuance of a new, modern textbook, with inclusive content that matches the needs of students and parents.

²² http://mhc.org.mk/announcements/474#.WFIVS_krLIU



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