

# MONTHLY BRIEF

December 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

### Academy of judges and public prosecutors

Academy of judges and public prosecutors "Pavel Shatev" has still not yet disclosed any information regarding the launch of instruction for the sixth generation of candidates for judges and public prosecutors, which is owed to the ongoing procedures before the Administrative and Higher Administrative courts regarding the selection of participants in the initial training.

Over the course of December, the Academy resumed with its regular operations from the aspect of training, in compliance with projected activities within the mandatory continual training for judges, public prosecutors, court presidents and public prosecutors in public prosecutor's offices, as well as mandatory and voluntary training for judges and employees in public prosecutor's offices. Namely, workshops and training sessions were held on the following topics:

- "Prohibition of torture - Article 3 of the ECHR/Lack of efficient investigation" for public prosecutors and court staff from all appellate regions, representatives from the Ministry of Interior and the Ministry of Justice;
- "Conflict of interest/anti-corruption measures/ethics and code of ethics" for lay judges of all courts in the Republic of Macedonia;



- "Procedure for census administration" for staff in public prosecutor's offices charged with census from all prosecutor's offices in the Republic of Macedonia;
- Trainings for lawyers, judges and court advisors over appeals before the ECHR and the current case law of the ECHR regarding Article 1 of Protocol 1, organized by the Academy in cooperation with the Ministry of Justice, in the framework of the twinning project with Latvia and Croatia;
- Strengthening of the rule of law intended for lawyers, judges and court advisors.
- Workshop "Budget and Budgetary Process" for staff involved in the compiling of the budgetary circular and monitoring of the budgetary process in courts of all areas.

In addition, the Academy hosted a meeting for harmonization of the case law at the level of appellate courts in the Republic of Macedonia, including judges and department heads from all appellate courts.

Over the course of December, the Academy's official website published the presentations from the regional conference themed "Countering the Use of Internet for Terrorist Purposes", held November 16-17 in cooperation with the Organization for Security and Cooperation in Europe (OSCE) - Transnational Threats Department.

### Monitoring of court proceedings

Over the course of December, the trial of Levica members Zdravko Saveski and Vladimir Kunovski, who are charged with taking part in protests, was postponed due to illness by one of the defendants.

The trial in case No.1904/16 regarding events in front of the Centar municipal building, in which the defendants are charged with violence, was held on December 16. The hearing was attended by all parties, including defendant Nikola Gruevski, who attended a hearing for the first time. Basic Court Skopje 1 Skopje judge Tatjana Mihajlova, who was appointed acting president of Basic Court Skopje 1 Skopje ten days prior to the hearing, is the trial judge. Series of violations from the Criminal Procedure Code were made over the course of this procedure.

Hearings in case "Divo Naselje" were supposed to be held on December 16 and 23, but despite the fact that an observer from coalition "All for Fair Trials" was present in the court, he was not informed whether the hearing is held. The next hearing is scheduled for 27 December 2016.

### Judicial Council of RM

On 5 December 2016, the Judicial Council held its 240. session and decided to appoint Snezana Bajlozova, judge in the Supreme Court of the Republic of Macedonia, as acting president of the Supreme Court of the Republic of Macedonia, while Tatjana Mihajlova, judge in Basic Court Skopje 1 Skopje, was appointed acting president of Basic Court Skopje 1 Skopje. In addition, the Judicial Council noted the termination of the post of lay judges in Basic Court Prilep, and elected lay judges in Basic Court Prilep. The Council also reached a conclusion that the initiative of judge Vladimir Tufegdžic of 28 November 2016 is unfounded

and there are no reasons to reevaluate the Decision over extraordinary grading of candidates for presidents of the Supreme Court of the Republic of Macedonia, Stip Appellate Court, Basic Court Skopje 1 Skopje and Basic Court Tetovo.

On 9 December 2016 the Judicial Council reached a decision over extraordinary grading of candidates for president of Basic Court Skopje 1 Skopje. Furthermore, it decided over temporary referrals of judges: judge Emina Kalac from Basic Court Veles to Basic Court Skopje 1 Skopje, for a maximum period of 1 year after day of referral; and judge Lidija Dodevska from Basic Court Radovis to Basic Court Sveti Nikole, for a maximum period of 1 year after day of referral.

On 22 December 2016 the Judicial Council held its 242. session and reached decisions over extraordinary grading of candidates for president of the Supreme Court of the Republic of Macedonia, Stip Appellate Court and Basic Court Tetovo, termination of the post of judge of Snezana Suplinovska, judge in Basic Court Skopje 1 Skopje due to retirement age of 64, as well as termination of the post of judge of a lay judge in Basic Court Skopje 1 Skopje and lay judge in Basic Court Veles, upon own request.

### Administrative Court

The Administrative Court accepted the appeal of the VMRO-DPMNE-led coalition at the 2016 early parliamentary elections for polling station 0396/1 in Gostivar, over which the State Election Commission ruled earlier following a complaint filed by BESA party, that a repeated vote is necessary, elaborating that the voting right of one person was infringed because she was already signed in the Voters' List. In the explanation, the Court notes that the complaint by the BESA party did not contain a signature and therefore the State Election Commission had no right to proceed upon such a complaint. Hence, the court decided there would not be a repeated vote in this polling station.

The Administrative Court also accepted an appeal by the SDSM-led coalition, deciding that a repeated vote would be held at polling station 2011 in Tearce. The elaboration of the Administrative Court judges reads that the Electoral Code was violated at the polling station because a form establishing irregularities during the voting process was missing. This document noted that one of the ballots was ripped off along with the perforated portion from the cluster, there was no report over the case, whereas the municipal election commission allowed the voting process to continue. The Administrative Court rejected the remaining three appeals by the SDSM-led coalition as unfounded.

It is noticeable that the makeup of the councils that accepted the SDSM and VMRO-DPMNE appeals included judges, who were said to give testimonies to the Special Prosecutor's Office back in October 2016 as suspects over the failure to proceed in compliance with the law when deciding on appeals related to the 2013 local elections. At the time, the Constitutional Court ruled on a repeated vote in municipalities of Centar and Struga, where the ruling VMRO-DPMNE lost the elections, accepting their appeals that had been earlier rejected by the State Election Commission.

Media noted that the Administrative Court did not abide by Article 150, Paragraph 2 of the Electoral Code, according to which the voting of each individual judge in the decisions upon the appeals related to the elections must be made public.

## **Improvement of judicial cooperation in the area of free access to information, implementing cross-border enforcement and cross-border bankruptcy, takeover or merger proceedings**

The only activity in the field of cooperation among judicial institutions over the course of December was the study visit by a delegation from the Republic of Turkey to the Republic of Macedonia. The Turkish delegation was comprised of Halil Koc, president of the First Chamber of the High Council of Judges and Prosecutors, Rasim Aytin, member of the First Chamber of the High Council of Judges and Prosecutors, Emin Sinmaz, member of the Third Chamber of the High Council of Judges and Prosecutors, and Bilgin Basaran, Secretary General of the High Council of Judges and Prosecutors. They paid a visit to the Judicial Council of the Republic of Macedonia on 22 December 2016.

The hosts presented the makeup and jurisdiction of the Judicial Council, the Academy of Judges and Public Prosecutors, the recruitment of Academy candidates, election of judges and their dismissal.

Members of the Judicial Council of the Republic of Macedonia exchanged experiences with their counterparts and discussed the possibilities for enhancement of cooperation within their jurisdiction.

## **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-Mediation**

Over the course of December, proceedings of licensed mediators resumed in cases initiated upon the request of interested parties, primarily from the business sector, and in compliance with changes in the Law on Litigation, according to which the attempt of mediation is mandatory in economic disputes up to MKD 1,000,000, for which a procedure initiated through suits before a competent court is stipulated.

In the month of December, the Justice Ministry Register of mediation proceedings includes only one case of mediation, the outcome being a failed mediation attempt. This does not reflect the real state of practicing mediation in Macedonia and points to the need for changes in regulations in this area.

The cycle of seminars organized by the association supporting mediation, established within the Economic Chamber of Macedonia, ended in December. Namely, the final seminar on acquainting the business community with the benefits of mediation in dispute settlement,

primarily of economic disputes for which a mediation attempt is mandatory in line with the Law on Litigation, was held on 1 December 2016. The seminar was held in Vinica, the target group being legal entities from Vinica, Kocani and other surrounding towns. All seminars were held free of charge for participants, and the lectures were delivered by licensed mediators who actively practice mediation in Macedonia in compliance with the existing Law on Mediation.

The adopted Conclusion from the first conference on mediation in SEE, held in Zagreb in October 2016, was implemented over the course of December, establishing an international association of mediators in Southeast Europe with head offices in Zagreb. This association includes members and mediators from Macedonia. Its aim is to join mediators from the region for the purpose of exchanging information on current developments, establishing conditions for cooperation and promotion of future project activities, along with the commitment for more intensive cooperation in the future.

