



## **Monitoring Brief on Following Chapter 23 – Judiciary, Fight against Corruption, and Fundamental Rights**

**January 2017**

### **I JUDICIARY**

#### **1. Independence**

##### **Judicial Council**

In January, the Judicial Council held the 243<sup>rd</sup><sup>1</sup> and 244<sup>th</sup><sup>2</sup> sessions. Several decisions have been adopted regarding the selection of lay judges, terminations of function and temporal referrals. A public announcement for the election of a President of Basic Court Gevgelija has been published as well. At the 243<sup>rd</sup> session, decisions have been adopted regarding the filed requests for a re-evaluation of judges – presidential candidates for 2015 and 2016.

At the 244<sup>th</sup> session, a decision for appointing Zlata Popova, who is a judge at Primary Court Gevgelija, an acting President of Primary Court Gevgelija was adopted. After the requests for determining unprofessional performance and malpractice of legal functions by the Council for Determination of Facts and initiating procedures for liability of judges, reporting judges from the Judicial Council members have been appointed. Decisions on objections against judges' decisions on the work schedule for 2017 have been adopted as well.

##### **Administrative Court – Denied requests for protection of rights of former President of the Supreme Court**

During December 2016, the Judicial Council of the Republic of Macedonia adopted a Decision DOV.br.0249 /1 for extraordinary evaluation of Lidija Nedelkova as President of the Supreme Court of the Republic of Macedonia. The evaluation was conducted during a closed session and referred to the period from 01.01.2015 to 30.09.2016, and the President was assessed as “very good” with 185 points received.

<sup>1</sup> <http://www.ssrn.mk/Novosti.aspx?novost=486>

<sup>2</sup> <http://www.ssrn.mk/Novosti.aspx?novost=489>





Dissatisfied with the decision, Ms. Lidija Nedelkova, filed a request for re-evaluation to the Judicial Council. In January 2017, the Council adopted a new decision DOV.br.02-1 / 5 thus rejecting the request as unfounded. After this decision, the former President of the Supreme Court filed a Request for the protection of the Law, annulment of the decision of the Judicial Council and an interim measure - a ban for the Judicial Council on taking further actions to elect the president of the Supreme Court. The request stated that during the extraordinary assessment, the principle of publicity of the procedure had been violated as a basic principle of fairness of the procedure, which constituted an unlawful act committed by the Judicial Council which prevented or restricted the guaranteed constitutional rights and freedoms referred to in Article 8 of the Constitution of the Republic of Macedonia (anything that is not prohibited by the Constitution or by law is permitted in the Republic of Macedonia.).

According to the Administrative Court, the action which prevents or restricts those rights must be illegal, which means that the action is illegal and individualized, i.e. it must refer to a specific person and not to a legal entity such as the Judicial Council. The extraordinary evaluation of the Judicial Council was in accordance with or for the purposes of Article 9, paragraph 3 of the Law on Judicial Council, which has the authority to conduct an evaluation of a judge in a higher court or election of a president of a court. The Council conducted the procedure for extraordinary evaluation on all candidates for president of the Supreme Court and adopted the decision in accordance with Article 38, paragraph 4 of the Law on Judicial Council, according to which "evaluation shall be performed in a closed session on the basis of the Commission's report."<sup>3</sup> Because of these reasons, Ms. Nedelkova's rights had not been violated. She has the right to appeal to the Supreme Court.

### **Court Administration – Trade Union of Administrative Employees, Judicial Authorities and Citizens Associations (UPOZ)**

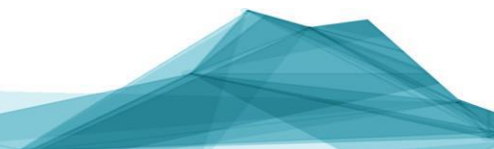
After the Ministry of Labour and Social Policy adopted a decision on reinstatement of Zivko Mitrevski, President of the Federation of Trade Unions of Macedonia (SSM), according to UPOZ on the morning of 06.01.2017, Mr. Mitrevski along with other 40 persons made a raid<sup>4</sup> at the SSM building by violently

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<sup>3</sup> The Administrative Court's Decisions USPI.no.5/2017 and USPI.no.6/2017 are available at:

<http://www.uskopje.mk/Odluki.aspx?odluka=20263> and <http://www.uskopje.mk/Odluki.aspx?odluka=20264>

<sup>4</sup> [http://www.upoz.org.mk/index.php?option=com\\_content&view=article&id=424:2017-01-06-13-18-38&catid=1:latest-news](http://www.upoz.org.mk/index.php?option=com_content&view=article&id=424:2017-01-06-13-18-38&catid=1:latest-news)





throwing workers out and got into a physical argument with the former President Darko Dimovski after which Dimovski was taken to the Department of Traumatology in need of medical assistance. UPOZ claimed<sup>5</sup> that Mr. Mitrevski, as a favorite of the government, was illegally reinstated as President of SSM, that he was supported by three illegitimate presidents of three trade union branches. UPOZ pointed out that Mitrevski is also responsible for the violation of the rule of law at the Administrative Court and the Public Prosecutor's Office since he "privatized" the SSM.

The European Trade Union Confederation (ETUC) and three European associations - the European Federation of Public Sector Unions (EPSU), European Federation of Industrial Unions (IndustriAll Europe) and the European Federation of Agriculture and Food (EFFAT) expressed deep concern about the conflict between the leadership of SSM and its trade union branches - the Agro Trade Union, SUTKOZ, SIER and UPOZ. These international institutions have offered their help by holding joint meetings with the leadership of SSM and the trade union branches.<sup>6</sup>

## 2. Transparency

### Council for Determination of Facts

The Council for Determination of Facts and the initiation of proceedings for establishing accountability of judges continues with non-transparent work, does not publish announcements for its public sessions and has not launched an official website yet.

## 3. Impartiality

### SJO – Continuing Difficulties in Collaboration with Primary Court Skopje 1 – Skopje

SJO reacted yet again that the difficulty in collaboration with Primary Court Skopje 1<sup>7</sup> continues. For a long time, SJO has been pointing out that the Court has consistently been slowing down the prosecution's work since the first actions undertaken by the establishment of this prosecution, i.e.

<sup>5</sup> [http://www.upoz.org.mk/index.php?option=com\\_content&view=article&id=425:2017-01-11-09-38-21&catid=1:latest-news](http://www.upoz.org.mk/index.php?option=com_content&view=article&id=425:2017-01-11-09-38-21&catid=1:latest-news)

<sup>6</sup> [http://www.upoz.org.mk/index.php?option=com\\_content&view=article&id=427:2017-01-13-13-11-22&catid=1:latest-news](http://www.upoz.org.mk/index.php?option=com_content&view=article&id=427:2017-01-13-13-11-22&catid=1:latest-news)

<sup>7</sup> <http://www.jonsk.mk/2017/01/31/%D0%BF%D1%80%D0%BE%D0%B4%D0%BE%D0%BB%D0%B6%D1%83%D0%B2%D0%B0-%D0%BE%D1%82%D0%B5%D0%B6%D0%BD%D0%B0%D1%82%D0%B0%D1%82%D0%B0-%D1%81%D0%BE%D1%80%D0%B0%D0%B1%D0%BE%D1%82%D0%BA%D0%B0-%D1%81%D0%BE-%D0%BE/>





ever since the Przino Agreement. This notification came after the prosecution submitted several requests for issuance of search warrants to the Duty Judge of the Department of Organized Crime and Corruption at the Court. These requests referred to a number of preliminary and investigative proceedings run by SJO and in addition to those proceedings, evidence on the illegal interception of communications was submitted, on the basis of which the prosecution has jurisdiction to require the issuance of search warrants. After the submission of the requests, the duty judge was replaced and the requests were reassigned to other judges. The Court has issued only one search warrant on 25.01.2016 after which SJO executed a search of a location in Skopje for the investigative proceedings of the case called "Titanik."

All other requests for issuance of warrants regarding high former and current officials have been denied. SJO points that the pre-trial judges assigned to these case, Elena Josifovikj and Aleksandra Pop Stefanjia, expressed disagreement regarding the requests and the criminal councils composed of judges Ljubinka Basheska, Goran Boshevski and Vladimir Panchevski, from judges Vladimir Panchevski, Lenka Davitkova and Diana Gruevska Ilievska and judges Lenka Davitkova, Diana Gruevska Ilievska and Ivica Stefanovski upheld the expressed disagreements among judges of the pre-trial procedure.

### **SJO – Withdrawal of Charges in the “Puch” Case**

The Public Prosecutor's Office (SJO) for crimes that arise from and are related to the illegal interception of communications withdrew the prosecution proposal in the "Puch" case in which five persons were charged.<sup>8</sup> This case, in which the fourth accused was the opposition leader Zoran Zaev, was handed over to SJO by the Public Prosecutor's Office of the Republic of Macedonia. Zaev was charged with the offense of violence against representatives of the highest state authorities. According to SJO, the factual situation stated in the indictment proposal is contrary to the existing evidence and the findings in the "Target" and "Tvrdina" cases. According to SJO, the purpose of adopting such a decision is to collect additional evidence that will fully clarify the facts and will contribute to the adoption of correct and lawful prosecutorial decisions.

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<sup>8</sup><http://www.jonsk.mk/2017/01/18/%D0%BF%D0%BE%D0%B2%D0%BB%D0%B5%D1%87%D0%B5%D0%BD%D0%BE-%D0%BE%D0%B1%D0%B2%D0%B8%D0%BD%D0%B5%D0%BD%D0%B8%D0%B5%D1%82%D0%BE-%D0%B2%D0%BE-%D0%BF%D1%80%D0%B5%D0%B4%D0%BC%D0%B5%D1%82%D0%BE%D1%82/>





## Competence

### Constitutional Court – Abolition of Article 144 of the Law on Judicial Service

Upon the initiative of the UPOZ Union and the previously initiated proceedings for assessing the constitutionality of the provisions of the Law on Judicial Service, the Constitutional Court abolished Article 144 of the Law which obliged the court officials to submit foreign language knowledge and computer programs knowledge certificates.<sup>9</sup> According to the Constitutional Court, the legislator determines the already established employment relationship with new conditions which are raised to a level of generality without taking into account that at the time of the employment, those conditions were not stipulated.

### Ministry of Justice – Launched a New Webpage of the Bureau for Representation of the Republic of Macedonia before the European Court of Human Rights (ECtHR)

The Ministry of Justice reported<sup>10</sup> that the Bureau for Representation of the Republic of Macedonia before the European Court of Human Rights has launched a new website <http://biroescp.gov.mk> which contains all relevant information regarding the competence of the Bureau and all the information on the European Court's work.

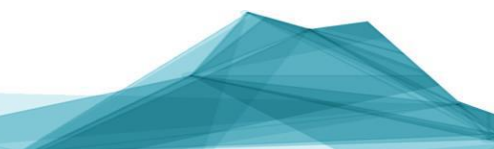
## IMPORTANT COURT CASES

### “Tvrdina”

On 17.01.2017, a hearing on the case K-1905/16 was held. The court proceeded the process with the "preparatory" hearing, i.e. a hearing for review of the evidence in a summary proceeding. During the previous hearing the court ordered SJO to request a declassification of information, i.e. of the proposed evidence from UBK. SJO claimed that no act was provided for the use of the classified information proposed as evidence in the proceedings. SJO's Public Prosecutor Lenche Ristoska, by submitting a copy of the established communication with MIA and UBK as producers of the information, noted that SJO acted in accordance with the instruction of the court and addressed the abovementioned authorities

<sup>9</sup> [http://www.upoz.org.mk/index.php?option=com\\_content&view=article&id=428:-144-&catid=1:latest-news](http://www.upoz.org.mk/index.php?option=com_content&view=article&id=428:-144-&catid=1:latest-news)

<sup>10</sup> [http://www.pravda.gov.mk/novost\\_detail.asp?lang=mak&id=1357](http://www.pravda.gov.mk/novost_detail.asp?lang=mak&id=1357)







Upon the replies to requests for declassification, the MOI requested for further clarification, while UBK responded that the declassification of information would have consequences on the state's security and that they are crucial for the operational work of UBK. Judge Lidija Petrovska obliged SJO to once again turn to the UBK, because, as she stated, the received responses to the requests for declassification of information were inconclusive. The next hearing is scheduled for 13.03.2017.

#### **“Levica”**

On 18.01.2017, a hearing on the case K-986/16 was held in which the defendants are members of the political party “Levica” - Zdravko Saveski and Vladimir Kunovski, for allegedly participating in the demolition of the Public Office of the President Gjorge Ivanov on 13 April 2016 during the protests. The trial was postponed for 07.04.2017 due to the judge's sick leave.

#### **“Zoran Bozinovski”**

On 23.01.2017, a trial hearing for the case KOK-79/16 was scheduled, in which the journalist Zoran Bozinovski is charged with the criminal offenses of “Criminal association” and “Espionage”. The trial was postponed yet again and this time because of improper service of summons, after which the court required that MOI's authorized officials find the witness, deliver the summons and escort him to court for the next hearing scheduled on 22.02.2017.

#### **“Divo Naselje”**

Hearings on the case KOK.br.127/15, publicly known as “Divo Naselje” in which the defendants are being tried for the crimes of "Terrorism" and "Terrorist organization" were closed to the public. The case relates to an armed shooting in Kumanovo - police crackdown on the armed terrorist group in the period from 9<sup>th</sup> to 10<sup>th</sup> of May 2015 in Kumanovo. Macedonian security forces suffered the loss of 8 police officers and 37 police officers were injured. Regarding the terrorism suspects, 14 dead bodies in uniforms were found.

#### **“Rover”**

The trial on the “Rover” case, “, K 2454/15, in which the fourth defendant is Ljube Boshkoski, President of the political party "United for Macedonia" (Мас. Обединети за Македонија) and former Interior Minister, was again postponed. The reason for the postponement was the absence of the defendant





Goce Mitrevski due to illness. This is the third time that the trial for the "Rover" case begins anew because the Appellate Court revoked the first-instance verdict twice because of a number of flaws and unspecified facts. Former Interior Minister Ljube Boshkovski is accused of accessory to murder in 2001.

## **II FIGHT AGAINST CORRUPTION**

### **SJO – Initiation of Two New Investigative Proceedings Entitled “Tarifa” and “Tenk”**

The Special Public Prosecutor’s Office initiated two new investigations, "Tenk" and "Tarifa". The first case concerns the purchase of official Mercedes vehicle worth over 600,000 euros. There is reasonable doubt that the crime of abuse of office<sup>11</sup> has been committed. According to SJO, two persons, looking to meet the desire of the former Prime Minister Nikola Gruevski, favored a firm appointed for the execution of the contract. Contrary to Article 36 of the Law on Public Procurement in the tender specification, there were conditions that had favored an economic entity. The case of the purchase of the costly vehicle caused strong reactions in the public after it was leaked through the opposition’s “bombs”, where former Prime Minister and former Minister of Interior can be heard negotiating the purchase of the extremely expensive "Mercedes" through MOI for the former Prime Minister’s needs.

The second case, codenamed "Tarifa", refers to the purchase of software for ELEM. There are seven suspects for abuse of official authority. They enabled the company that acquired the tender to qualify for the second stage of negotiations without complete documentation. The value of the tender is over 4 million euros. The system was to be fully implemented by 2013, while SJO’s evidence showed that a significant part of the software has not been implemented, although 3.7 million euros have been paid so far. By not implementing the software, the seven suspects caused damages of 450 thousand euros.

### **“Erazmus”**

The trial for the “Erazmus” case was held on 30.01.2017. In this case, six professors from the Faculty of Economics in Skopje are accused of the crimes of "Taking a bribe", "Influence peddling," "Abuse of official position and authority" and "Giving a bribe". The hearing was postponed after some of the

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<sup>11</sup> <http://www.jonsk.mk/2017/01/24/%D0%BE%D1%82%D0%B2%D0%BE%D1%80%D0%B5%D0%BD%D0%B8-%D0%B4%D0%B2%D0%B5-%D0%BD%D0%BE%D0%B2%D0%B8-%D0%B8%D1%81%D1%82%D1%80%D0%B0%D0%B6%D0%BD%D0%B8-%D0%BF%D0%BE%D1%81%D1%82%D0%B0%D0%BF%D0%BA%D0%B8-%D0%BF/>





lawyers of the accused asked for recusal of Judge Ljubinka Basheska and Judge Ivica Stefanovski, as a member of the Trial Chamber. The trial has been postponed indefinitely until the adoption of a decision upon the motion for recusal of the judges.

### **“Potkup”**

On 23.01.2017, a trial hearing codenamed “Potkup” or KOK 62/16 was scheduled, in which the defendant Zoran Zaev, the president of the political party SDSM, is charged with the crime of “Taking a bribe”. The trial was postponed due to a request for recusal of the public prosecutor. The main hearing is scheduled on 23.02.2017.

### **State Commission for the Prevention of Corruption (DKSK)**

At a public session held on January 4<sup>th</sup>, 2017, the State Commission for the Prevention of Corruption (DKSK) rejected the objections raised by the coalition led by the Social Democratic Union of Macedonia - Skopje for violations of the Electoral Code (Article 8-a) related to employments and building of public facilities during the election campaign period.<sup>12</sup> According to DKSK’s adopted and published decisions, the objections were rejected because the notices were published before the elections, or agreed upon by the DKSK, or funds were provided in the budget for the activities undertaken during the campaign.

### **Academy for Judges and Public Prosecutors – What has Macedonia done for the prevention of corruption?**

The Director of the Academy for Judges and Prosecutors "Pavel Shatev" Aneta Arnaudovska, rejected criticism of the public that Macedonia, as well as the Academy, did nothing to prevent corruption in society. She was a guest on the news of TV Nova where she talked about the work of the Academy and pointed out that government formation and a functioning assembly were necessary for the continuance of the reforms in the judiciary.<sup>13</sup>

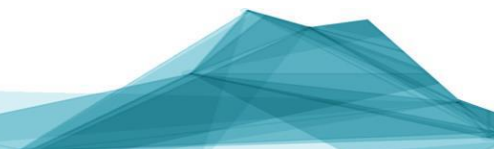
## **III FUNDAMENTAL RIGHTS**

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<sup>12</sup>DKSK’s announcement on the public session held on 04.01.2017

[https://www.dksk.mk/index.php?id=19&tx\\_news\\_pi1%5Bnews%5D=13&tx\\_news\\_pi1%5Bcontroller%5D=News&tx\\_news\\_pi1%5Baction%5D=detail&cHash=0162cb710e48ea0a5e2f4d4579ccbbb8](https://www.dksk.mk/index.php?id=19&tx_news_pi1%5Bnews%5D=13&tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=0162cb710e48ea0a5e2f4d4579ccbbb8)

<sup>13</sup> <http://www.jpacademy.gov.mk/novosti/----aae-->







## The Rule of Law

The main focus in January was aimed towards giving the mandate to form a government after the elections on December 11<sup>th</sup>. Article 90 of the Constitution clearly stipulates that within 10 days, the President shall award a mandate to the party or parties that have provided the majority of seats in the assembly. Although no one has managed to create a coalition with a majority of seats within the stipulated period of 10 days, the President decided to award the mandate to Nikola Gruevski, the leader of the coalition led by VMRO DPMNE, which won 51 mandates. Although DPMNE and the coalition won the most seats, they have not secured a majority of at least 61 Members of Parliament, and yet the party leader was given the mandate to form the government. After a period of 20 days for negotiations about a new parliamentary majority, submission of a program, and composition of the new government, DPMNE failed to secure a majority. After that, Zoran Zaev, the leader of the opposition urged President Ivanov to give him the mandate, but that did not happen.

## Freedom of Speech and Media

“The media image of political pluralism in Macedonia remains the same as before the early parliamentary elections. Once the pre-election period of 100 days with specific rules for media was completed, most television programs returned to their standard editorial policy.” This is the general conclusion of the report on Monitoring of Democracy in Macedonia – MODEM referring to media content broadcasted on Public Radio Broadcasting Service and commercial television programs with national coverage from 16<sup>th</sup> to 20<sup>th</sup> and from 23<sup>rd</sup> to 27<sup>th</sup> of January 2017, and it was implemented by the Institute of Communication Studies - Skopje.<sup>14</sup>

The report concludes that television programs 24 Vesti, Telma, Alsat M and TV 21 were neutral and observed the events critically, while Sitel, Alfa, TV Nova and Kanal 5 were predominated by the views of the political party VMRO-DPMNE and reports on the achievements of its officials. The exception is the Macedonian Television program, which for the most part continued with unbiased reporting on major political and social events, despite the termination of the editor appointed by the opposition, in accordance with the Prizno Agreement.

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<sup>14</sup> <http://respublica.edu.mk/attach/MODEM-izvestaj-januari-MK-2017.pdf>





## Freedom of Association

### “Colorful Revolution”

Two civic activists from the Colorful Revolution once again found themselves charged with the offense of participating in a crowd committing a criminal offense.

- In the case of K-1271/16, in which the defendant is a civic activist Mariglen Demiri, according to expert evidence owes the state damages of 522,000 MKD or about 8,500 euros. The expert evidence was contested by counsel on the ground that it is illegal. The trial was attended by a representative from the Office of the President of the Republic of Macedonia. The trial was postponed to 14.03.2017.
- Case K-1526/16, in which the defendant is a civic activist and MP Pavle Bogoevski, although it has been repeatedly delayed, due to the necessity for determination, confirmation, and specification of the damages, it was yet again delayed due to more precise specification and acquiring of additional evidence.

## Discrimination

On the walls of the “Gjorgji Sugarev” school in Bitola, swastikas and graffiti with the messages “Death to Gypsies” and “Die Gypsies” were painted.<sup>15</sup> The graffiti were seen on 19.01.2017 year. They call for violence against the Roma, i.e. represent hate speech which is a criminal offense under the Criminal Code. Such graffiti are particularly troubling given the fact that the majority of pupils at the school are Roma (around 80%).

By writing the words, the perpetrator has committed the crimes of “Causing of hate, discord or intolerance on national, racial, religious and other discriminatory ground” under Article 319 of the Criminal Code of the Republic of Macedonia, “Racial or other discrimination” under Article 417 of the Criminal Code Republic of Macedonia as well as “Endangering security” under Article 144 of the Criminal Code of the Republic of Macedonia. Despite hurting the dignity of the Roma people, wishing

<sup>15</sup> <http://mhc.org.mk/announcements/521#.WJnJrTsrLIU>





for their disappearance and the non-existence of such community, the perpetrator also endangers the security of many people and attempts to incite violence between communities in the society.

