



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

February 2017

I JUDICIARY

1. Independence

Repeated Reassignment of Judges at Primary Court Skopje 1

The process of reassignment of judges at the Primary Court Skopje 1 continues. After the reassignment of 9 judges during the months of September and October 2016 by the former President of the Court, this February, the acting President of the Primary Court Skopje 1 Tatyana Mihajlova decided on the reassignment of twenty judges from the Criminal Department and the Misdemeanor Department. Some of the judges were assigned out of their previous department while others to lower positions. The majority of judges have filed complaints to the Supreme Court. Some media interpreted the decision as a violation of the independence of the court, given that the reassigned judges were working on cases of the Special Public Prosecutor's Office, which has a history of extremely difficult collaboration with the Court.

Some of the reassigned judges are among the few who accepted SJO's requests for search or detention, as well as 15 judges who signed a petition criticizing the work of the former President Vladimir Panchevski. Insofar, 30 judges in Primary Court Skopje have been reassigned, i.e. starting from September 2016 up to date. The Court responded to media articles by expressing its surprise over the interest of individuals for the reassigning and publishing of falsehoods. The Acting President acted within the scope of the authority and all judges of the Court were elected as judges of the Primary Court Skopje 1, and were not assigned to separate departments.¹ According to the Court, there was no "purge" of "unsuitable" judges, but these were regular activities within the scope of the Annual Schedule.

Proceedings Initiated by Basic Public Prosecutor's Office for Misuse of Funds in Election Campaign

Several media reported that the Public Prosecutor's Office (Mac. OJO) in Skopje initiated proceedings against the SDSM political party (according to sources from the same party) for misuse of funds in the

¹ <http://www.osskopje1.mk/Novosti.aspx?novost=591>





election campaign for the early parliamentary elections. According to media reports, the Public Prosecutor's Office in Skopje initiated proceedings against "one person as an organizer of the election campaign and other persons", as well as against a legal person for the crime of abuse of funds for financing an election campaign. From the OJO's report, it is clear that it was about a political party.² The information were released about the same time when SJO summoned about 200 people from Ohrid, mostly members and sympathizers of VMRO-DPMNE, to give statements as witnesses in the pre-trial proceedings, in which, according to unofficial information, donors and donations of VMRO-DPMNE and any abuses associated with them are being investigated.

OJO Skopje informed that the proceedings were initiated in 2016 and are being run indiscriminately and independently of other authorities' actions. OJO reports that in dealing with the criminal charges filed by the competent authority, the opened cases refer to the use of illegal funds for the election campaign and giving false information in financial statements. According to OJO, so far they have collected material and relevant documents as evidence, and have heard testimonies from 70 witnesses.

Initiated Preliminary Proceedings for Criminal Acts during Elections

The Public Prosecutor's Office for Organized Crime and Corruption reported to having initiated preliminary proceedings for determining the existence of grounds for suspicion of organized crimes against the elections and abuse of official position in performing the function by former senior officials of Ministry of Interior of the Republic of Macedonia and other physical and legal entities from Skopje, Kumanovo and Strumica.³ The initiated proceedings refer to crimes that were allegedly committed during 2014 and 2016. According to the Prosecutor's Office, there are grounds for suspicion that the persons influenced the voting in various ways during the elections.

2. Impartiality

SJO Filed a Complaint against Disregard of Evidence in "Centar Municipality" Case

SJO reported that the Primary Court Skopje 1, acting upon the indictment proposal against violence in the Centar Municipality, decided to disregard a part of the evidence submitted by SJO. SJO informed

² <http://jorm.gov.mk/?p=3852>

³ <http://jorm.gov.mk/?p=3872>





the public that a complaint against the Court's decision has been filed with the Appellate Court due to the essential violation of the Code of Criminal Procedure.⁴

SJO Prosecutors Sanctioned for Contempt

Judge Tatyana Mihajlova interrupted the last court hearing for ordering and perpetrating violence in the Centar Municipality by sanctioning Prosecutors Katica Janeva and Fatime Fetai with a fine of 2,000 euros for "Contempt of court". The first fine of 1,000 euros was imposed on Prosecutor Fetai after she accused Judge Mihajlova of intellectual forgery of minutes of the previous hearing and stated that she would initiate criminal proceedings against her. Janeva was sanctioned with the same fine after pointing out that the judge did not deserve the title of Acting President of the Court and that she was incapable of taking the minutes. After that, the two prosecutors accused the judge of intellectual forgery yet once again and they were fined with 1,000 euros, thus reaching a fine of 4,000 euros in total.

This is the first case in the history of the Basic Court Skopje 1 where a judge sanctions a public prosecutor for contempt of court. SJO announced that they appealed the Judge Mihajlova's decision with the Appellate Court. According to the Court, in the 72-year history of the institution, they have never witnessed such an insult to a judge, to the court, and the state judiciary in general.⁵ The Court condemned the prosecutors' behavior as arrogant and extremely unprofessional and stated that Janeva and Fetai had abused the right to freedom of speech and violated every principle of the Code of Ethics and Professional Conduct for Prosecutors.

3. Competence

Judicial Council Meets the Standard MKC EN ISO 9001:2015

During 2016 the Judicial Council of the Republic of Macedonia introduced the standard MKC EN ISO 9001:2015 - System for Quality Management - Requests. The Council reported that the certification

⁴ <http://www.jonsk.mk/2017/02/03/поднесена-жалба-против-издвојување-н/>

⁵ <http://www.osskopje1.mk/Novosti.aspx?novost=592>





body INTERCERT conducted a testing in December 2016 and found that the Judicial Council meets the standard MKC EN ISO 9001:2015.⁶

Judicial Council – 245th7, 246th8 and 247th9 Session

The Judicial Council held three sessions at which it adopted several decisions on termination of function of a lay judge in several courts around the country as well as decisions about selecting new lay judges. A review and evaluation of reports on the work of the courts in the country was also conducted for the fourth quarter of 2016. It was found that the courts have worked efficiently since they have managed the influx of cases.

SJO Requires Involvement in the Training of the Academy for Judges and Prosecutors

SJO sent a request to the Academy for Judges and Prosecutors “Pavel Shatev” with the aim of enhancing the collaboration with the Academy. The request states that based on legally prescribed obligations, the Academy has a duty to exercise professional collaboration with this Public Prosecutor’s Office as well and to include them in the training along with the other Public Prosecutor’s Offices.¹⁰

4. Important Court Cases

“BRIBERY” (Mac. “Поткуп”)

The trial of the "Bribery" - KOK 62/16 case was scheduled on 23.02.2017, in which Mr. Zoran Zaev is charged with the crime of “Accepting a bribe”. The hearing was postponed due to the absence of the defendant. Regarding this absence, the defendant's lawyer had submitted evidence, which the court required to be translated into Macedonian and re-submitted to the court. In the meantime, the court also submitted a decision on exclusion of the public prosecutor in this case to the defenders. The next hearing is scheduled for 03.04.2017.

“CENTAR MUNICIPALITY” (Mac. “Општина Центар”)

⁶ <http://www.ssrn.mk/Novosti.aspx?novost=494>

⁷ <http://www.ssrn.mk/Novosti.aspx?novost=491>

⁸ <http://www.ssrn.mk/Novosti.aspx?novost=493>

⁹ <http://www.ssrn.mk/Novosti.aspx?novost=496>

¹⁰ http://www.jonsk.mk/wp-content/uploads/2017/02/Dopis_ASJO.pdf





On 22.02.2017 a hearing was held on the case known as “Centar Municipality”, in which Mr. Nikola Gruevski is a defendant along with 15 of his collaborators accused of the criminal offence of “Violence”. Prior to the hearing, the trial judge was accused of "Intellectual Forgery" by the SJO due to amendments made in the minutes which did not correspond to what had been said in the previous hearing, i.e. did not correspond to the audio-visual recordings of the hearing.¹¹ After that, two SJO prosecutors from were sanctioned with fines of 2,000 euros for Contempt of Court. The SJO prosecutors insisted on exercising their legal right to obtain a copy of the recording as to prove their claim and filed a complaint against the trial judge. After the decisions to sanction the prosecutors, the court submitted the case to the Council of Public Prosecutors, thus following the "analogy" that this Council is responsible for and supervises the performance of SJO.

“ZORAN BOZINOVSKI”

On 22.02.2017 a trial was held on the case KOK-79/16, in which the journalist Zoran Bozinovski is charged with the crimes of "Criminal association" and "Espionage". At this trial, the plaintiff was examined as a prosecution witness, who referred to some documents in his testimony, for which the defendant was immediately obliged to submit as proof. However, due to the lack of possession of the original documents, the proposal was rejected. The defendant also requested for an insight into the case in the presence of a lawyer and the court answered that it will be granted before the beginning of the next hearing. It was noted that the trial judge, in giving testimony as a witness, acted according to the old Code of Criminal Procedure. The new Code of Criminal Procedure alters the nature of the criminal procedure thus changing it from an inquisitorial into an accusatorial procedure, which means that judges should be put in the role of neutral arbitrators and should monitor the implementation of the procedure. As it was observed, the judge refused to use her authority to intervene with a request for clarification on the part of the witness statement, i.e. her interventions rather seemed like leading questions for the witness. The next trial is scheduled for 06.03.2017.

¹¹ <http://all4fairtrials.org.mk/wp-content/uploads/2017/02/%D0%9A%D0%BE%D0%B3%D0%B0-%D1%81%D1%83%D0%B4%D0%BE%D1%82-%D0%B5-%D0%BE%D0%B1%D0%B2%D0%B8%D0%BD%D0%B5%D1%82.pdf>





“DIVO NASELJE”

During the month, hearings on the case KOK.br.127/15, publicly known as “Divo Naselje”, were open to the public and the defendants were examined. At the last hearing, the third defendant was questioned about the facts and circumstances regarding the time and place of occurrence of the alleged crime. In this case, the defendants are being tried for the criminal acts of “Terrorism” and “Terrorist organization”. The next hearings are scheduled on the following dates: 03.03.2017, 09.03.2017, 13.03.2017, 17.03.2017, 21.03.2017, 23.03.2017 and 29.03.2017.

II FIGHT AGAINST CORRUPTION

New Investigation Procedure of SJO “TRUST”

SJO publicly introduced the new investigation procedure against the legal parties “Transmet” (Mac. Трансмет), “Sileks nemetali ST” (Mac. Силекс неметали СТ) and “VATO” (Mac. BATO) from Studenichani for forgery of documents required for participation in a tender offer by Elektrani in Macedonia (ELEM).¹² According to Prosecutor Fatime Fetaj, the new investigation will show how far the fight for winning tenders went and how a consortium with falsified documentation won a tender and annex to a contract for 1.06 billion MKD or 17,235,772 EURO. The investigation was initiated on the basis of three conversations, two of which were not released, and it deals with the digging of coal from Suvodol in Bitola for the purposes of REK Bitola, in which the first suspect is the manager of Trans Met, the second suspect is the manager of the Sileks Nemetali and the third suspect is the manager of “Vato” DOO - Studenichani, all of whom signed a contract with ELEM. The suspects are charged with forgery of tender documentation on the basis of which they won the tender and gained illegal profits. The prosecution also filed a request for the detention of Sead Kochan, owner of the “Trans Met” company, and Vasilije Avirovikj, former manager of the “Sileks nemetali ST” company, as first and second suspects of the case. According to SJO, there is the danger that the suspects will destroy the evidence or create forged tender documents.

¹² <http://www.jonsk.mk/2017/02/28/%D0%B8%D0%B7%D1%98%D0%B0%D0%B2%D0%B0-%D0%BE%D0%B4-%D0%BF%D1%80%D0%B5%D1%81-%D0%BA%D0%BE%D0%BD%D1%84%D0%B5%D1%80%D0%B5%D0%BD%D1%86%D0%B8%D1%98%D0%B0-2/>





The “Erasmus” Case

The trial of the "Erasmus" case was held on 22.02.2017. Six professors from the Faculty of Economics are accused of “Taking a bribe”, “Influence peddling”, “Abuse of official position and authority” and “Giving a bribe”. The trial was adjourned due to health issues of one of the accused in the procedure, for which medical evidence was duly submitted.

Expanded Investigation for the “Titanik” Case

SJO Prosecutor Katica Janeva reported that the investigation on the "Titanic" case, which now involves a total number of 17 suspect, is being expanded. Some of them are new suspects, while others are already part of the investigation, but they are being charged with new crimes. In the "Titanik" case, former seniors of VMRO-DPMNE are suspected of causing election irregularities.

Member of Parliament who are Ministers Have Submitted Different Property Titles to the DSKS

The newly elected Members of Parliament obeyed the legal obligation to submit questionnaires and statements of property titles to DSKS. However, some MPs submitted questionnaires as ministers as well, and a discrepancy existed between the data presented in both questionnaires.¹³

III FUNDAMENTAL RIGHTS

Freedom of Speech and Media Pluralism

On February 28th at a gathering of citizens called “За заедничка Македонија”, a part of the journalistic team of the electronic medium A1ON was attacked. A reporter and a cameraman were attacked and “punched on the head and body” and some of the protestors smashed their camera as well. Since “the organizer of the protest” failed to “protect the media workers”, A1ON announced they would file charges against the initiative “За заедничка Македонија” and “will demand compensation for the damages cause with the crazed and primitive behavior”.

¹³http://www.dksk.org.mk/imoti_2/index.php?search=2&ime=%D0%9D%D0%B8%D0%BA%D0%BE%D0%BB%D0%B0&prezime=&funkcija=&institucija=





Several institutions working in the field of media condemned the attack and required a punishment for the perpetrators. The Agency for Audio and Audiovisual Media Services fiercely condemned the attack stating the following: “Under no circumstances should the safety and life of media professionals be endangered. Rather, they should always be allowed to freely report on all events and developments, especially in times of utmost socio-political significance”.¹⁴ The Council of Media Ethics of Macedonia condemned the event as well: “This is not an isolated incident and the tendency for violence and obstruction of the work of journalists and media workers continues to be a serious problem”.¹⁵ The President of the Association of Journalists of Macedonia, Naser Selmani, claimed that the responsibility for the violence lies with the VMRO-DPMNE leader Nikola Gruevski. He pointed out that during the rule of Gruevski, two journalists were imprisoned, there were 40 attacks on journalists and the A1 Television Channel was closed.

The Ministry of Interior arrested 12 people on suspicion of violence against the journalist and the cameraman from A1ON, and Interior Minister Agim Nuhiev stressed that: “All attempts of disturbing public order and peace will be punished. I appeal to all citizens to refrain from any kind of violence and violation of legal and constitutional rights”.

Freedom of Association

A statement issued on January 28th, 2017 by VMRO-DPMNE said the following: “SDSM and SOROS hoped that by means of money and outside help they would manipulate the will of the people, would gain power and continue with its destructive march, avoiding punishment. On December 11th the people put an end to such grim fantasies of SDSM and SOROS”.¹⁶ The leader of this party, Nikola Gruevski, stated the following: “We will fight for de-Soros-ization of the Republic of Macedonia and for strengthening the independent civil society which will not be under anyone's control. The functioning of NGOs will be regulated after the models of most advanced democracies in the world”.¹⁷

This atmosphere of political hostility towards some social groups of Macedonian civil society in February led to the need for a joint response by 127 citizens associations, which stressed “the need for

¹⁴ http://www.avmu.mk/index.php?option=com_content&view=article&id=3161%3A-1&catid=88%3Asoopstenija-media&Itemid=313&lang=mk

¹⁵ <http://semm.mk/2015-05-23-11-45-15/259-soopstenie-01-03-17>

¹⁶ <http://semm.mk/2015-05-23-11-45-15/259-soopstenie-01-03-17>

¹⁷ <http://mk.voanews.com/a/macedonia-politics/3694205.html>





protection, preservation and promotion of civil society despite threats against it, but also for defense against the unfounded attacks and lies to which it has been exposed". The need for defending civil society "refers to a defense of coexistence of citizens with different ethnic backgrounds, defense of commitments to higher living standards, the defense of the fight against corruption, defense of fair trial, the defense of freedom to publicly say what we think, defense of the right to equal treatment in hospitals, defense of the education in which nobody will be discriminated against, defense of solidarity and assistance we provide to or receive from our fellow citizens".¹⁸

Hate Crimes

During the month, the Helsinki Committee registered 17 hate crimes.¹⁹ Fourteen incidents happened in Skopje, two in Prilep and one in Bitola. Due to different ethnicity, dozens of young people were attacked and injured, and 8 headquarters of the political party SDSM were attacked with stones. The incidents of attacks on young people occurred in downtown Skopje (Makedonia Street, Transporten Centar, NBRM, Gradski Stadion) and the bus stops of JSP buses. The incidents include the stoning of a bus, group fights, but also serious attacks with cold weapons. Headquarters of the SDSM party were attacked with stones in Skopje, Prilep and Bitola. The stoning usually occurs at night, i.e. after midnight.

¹⁸ <http://soros.mk/mk/Home/NewsAndActivity?newsID=7291&catID=7>

¹⁹ www.zlostorstvaodmraza.mk

