



Monthly brief on the monitoring of Chapter 23 – Judiciary, Fight against Corruption and Fundamental Rights – May 2017

I JUDICIARY

Independence

The Supreme Court continues to debate the admissibility of the intercepted materials

The Supreme Court of the Republic of Macedonia held a continuation of the General Session where they reviewed the abstract on the legal question "Can evidence obtained in an illegal manner be used as evidence in court proceedings", i.e. they discussed the admissibility of intercepted materials in an evidentiary hearing.

The continuation of the General Session was also attended by Ms. Mirjana Lazarova Trajkovska, former judge at the European Court of Human Rights who acquainted the judges with the practice of the European Court of Human Rights and answered the questions posed. No decision was reached and the next continuation of the session was postponed for an indefinite period.¹

Detention and precautions for participants in the violence in the Parliament

At the proposal of the Primary Public Prosecutor's Office, the judge in preliminary proceedings from the Primary Court Skopje 1 imposed the measure of detention for two people and measures for precautions for two other persons. The suspects are charged with the crimes of Participating in a Crowd Committing a Criminal Act under Article 385 of the Criminal Code and Causing General Danger under Article 288 of the Criminal Code².

PPO for organized crime and corruption joins the investigation of those involved in the violence in the Parliament

PPPO informed that after reviewing the material evidence, they decided that it is necessary to involve the department on organized crime and corruption in the investigation, as some of the actions undertaken by people involved in the event were under the territorial and subject-matter jurisdiction of this prosecutor's office.³

The prosecution informs that a concatenation of incriminating actions constituting the legal essence of a larger number of criminal acts are in question, which cannot only be described as a mass tort, nor as specific crimes committed by individual offenders arising thereof.

Suspended sentences for nine people participating in the violence in the Parliament

¹ <http://alturl.com/8rrgu>

² <http://alturl.com/mhjb2>

³ <http://jorm.gov.mk/?p=4067>





PPO Skopje filed an indictment against nine persons participating in the riots in Parliament. The suspects are accused of committing the criminal act of Participation in a mob preventing an official person in performing official duties under Article 384 paragraph 1 of the Criminal Code.

On May 23, during the main hearing before the Primart Court Skopje 1 all nine accused confessed they had done the act whereby the Court immediately stated suspended prison sentences to them. None of the defendants was sentenced to an effective prison sentence in spite of the fact that some of them have a criminal record of previous offenses.

After the events in Parliament, the Helsinki Committee prepared a special report in which they identified the elements of 28 crimes committed according to the Criminal Code⁴. The report was sent to the Public Prosecutor's Office and the Ministry of Interior. In the proceedings so far, the Prosecutor's Office found legal qualifications for only 5 crimes. These actions were explained by claiming that the legal qualification of a criminal act are provided by the public prosecutor who is guided by the evidence collected up to that point, which means that if new evidence emerges further on indicating that a person has committed another crime, the public prosecutor may upgrade the charges during the ongoing proceedings or prosecute the person for other offenses.⁵

Investigative procedure for the attempted murder of MP Zijadin Sela

The Public Prosecution informed that they had started an investigation against two persons, who together with other people are suspected that on the day when the violence in the Parliament building occurred, committed attempted murder of MP Zijadin Sela.

The competent public prosecutor issued an order for the investigation of two persons for the alleged crime of murder attempt. The Public Prosecutor believes that it is necessary to impose a measure to ensure the presence of the suspects, whereby the prosecutor submitted a proposal for detention to the judge in the preliminary proceedings. Both of the defendants got sentenced to detention of 30 days.⁶

Investigative proceedings for the person who left an explosive device in the Assembly building

The Public Prosecutor said that they instigated proceedings against one person on existence of reasonable grounds for suspicion that he committed the criminal offenses of Causing General Danger under Article 288 of the Criminal Code and Illegal Manufacture, Possession and Sale of Weapons or Explosive Materials under Article 396 of the Criminal Code.⁷

Believing that the legal grounds have been met, the competent public prosecutor submitted a request for detention of the suspect to the judge in the preliminary proceedings in the Primary Court Skopje 1. The proposal of the prosecution was accepted by the court and the court issued a decision for the suspect to be held in detention for a period of 30 days.

Impartiality

⁴http://www.mhc.org.mk/system/uploads/redactor_assets/documents/2282/Posebni_izvestaji_Sobranie_27_04_17.pdf

⁵ <http://jorm.gov.mk/?p=4028>

⁶ <http://jorm.gov.mk/?p=4044>

⁷ <http://jorm.gov.mk/?p=4053>





The Supreme Court terminated Sead Kochan's detention, a judge in the preliminary proceedings accepted a release on bail

The case on Sead Kochan went back to its beginning, to a judge in the preliminary proceedings for retrial and another decision due to essential violation of provisions from the Law on Preliminary Proceedings. The Criminal Council consisting of Monika Bahchovanovska – President of the Council and judges Ljubinka Basheska and Vesna Kostova-Spaseska – members of the Council, adopted this decision by acting on an appeal of the Special Public Prosecutor.⁸

Previously, through a written announcement, the Supreme Court confirmed that a five-member council revoked the decisions of the Primary Court Skopje 1 and the Criminal Council of the Court of Appeals – Skopje about Sead Kochan's detention. The announcement stated that the decision follows after the lower-instance courts violated the laws when they imposed detention on Kochan.⁹

The decision was adopted by a five-member council the president of which is Jovo Vangelovski. It was adopted after the request for protection of legality the submission of by the State Prosecutor Marko Zvrlevski.

The judge in the preliminary proceedings accepted the prosecutor's and defendant's proposal and made a decision to impose a monetary fine of 875.298,56 EUR to Mr. Kochan, taking his passport and imposing an obligation on him to call the court on weekly basis. The proposal for detention because the suspect could influence witnesses or repeat the crime was rejected as ungrounded.¹⁰

The Court adopted this decision due to the Kochan's deteriorating health (who submitted a medical certificate that he had undergone a surgical intervention of having a coronary stent implanted), and rejected the proposal of the Special Public Prosecutor to have the measure of detention imposed on Kochan due to the danger of him influencing the witnesses or repeating the crime, as ungrounded.

SPP's requests to freeze some of VMRO-DPMNE's assets rejected

The Criminal Court did not accept any of the requests of the Special Public Prosecutor's Office (SPPO) to freeze VMRO-DPMNE's assets in the Talir case. All 12 requests for freezing the assets were rejected, including the one for the party's headquarters.¹¹

According to SPP's preliminary proceedings, from 2009 to 2015, the suspects from the party's leadership accepted illegal funding for party financing in the amount of 4.9 million EUR. This money, instead of being deposited back to the budget as the law stipulates, was used for unlawful financing of the party.

The judges from the preliminary proceedings initially expressed disagreement on the freezing the assets, and then the judges from the organized crime and corruption department upheld their disagreement. SPPO corrected some of the remarks of the Criminal Court and once again requested

⁸ <http://alturl.com/dstt4>

⁹ <http://alturl.com/py3mg>

¹⁰ <http://alturl.com/swpce>

¹¹ <http://alturl.com/snfv2>





freezing of VMRO-DPMNE's assets, SPP's announcement states¹². This time, the prosecution requested freezing of a single facility – the party's headquarters.

For the second time, the criminal court refused to freeze the party's seven-floor building in the center of the city. The three judges, Goran Boshevski, Verka Petkovska and Lenka Davitkovska assessed that there is no evidence and elements of a crime or indication that the party's headquarters were unlawfully built.¹³

SPP does not have the right to appeal against these decisions.

II. FIGHT AGAINST CORRUPTION

Three new investigation of the Special Public Prosecutor's Office

At its press-conference, the Special Public Prosecution announced the opening of three new investigations: "Trevnik" (Lawn), "Traektorija" (Trajectory) and "Talir".¹⁴

The Special Public Prosecutor Katica Janeva emphasized that two of them are financial investigations, while one refers to the irregularities in a construction procedure.

„Trevnik“–The prosecution initiated this investigation as a result of the wiretapped, publicly undisclosed talks which give reasonable grounds for suspicion of three persons committing criminal actions related to the construction of three weekend-houses in the Municipality of Zelenikovo, without having the right to this kind of building, i.e. building without a construction permit. According to the obtained evidence consisting of satellite footage, among other things, and expert insight, as well as other documentation, these three houses started to be built in 2011, and the construction permit from the municipality was obtained in 2013, when they had already been finished. The Law on Construction stipulates the reverse order, i.e. one needs to first obtain a lawful construction permit, then start the construction, and any construction activity outside this order is punishable under the corresponding criminal act, unlawful construction under Article 244, paragraph 1 from the Criminal Code that this investigation was opened for.

„Traektorija“– The second investigation was initiated against four officials – former high government officials, for whom there is reasonable suspicion that in the second half of 2012 and 2013 they undertook several actions over the course of the procedure for selection of a contractor for the construction of the motorway sections Miladinovci-Shtip and Kichevo-Ohrid, thus taking advantage of and exceeding their authority and depriving the Budget of the Republic of Macedonia in the amount of at least 155.117.172 EUR, thus enabling the contracting company to gain material benefit in an equal amount.

„Talir“– The last investigation presented referred to the unlawful financing of the political party of VMRO-DPMNE. According to SPP, there are reasonable doubt that despite the fact that the prime suspect, as a president of the political party, was well-acquainted with the legal limitations, in the

¹²<http://alturl.com/6ov3o>

¹³ <http://alturl.com/6i6s7>

¹⁴ <http://alturl.com/hj564>





period from 2009 until 2015 he enabled party financing contrary to the legal provisions, whereby the motives for the prime suspect's actions were of an exclusively personal nature and were related to the strengthening of his political power and position in the party and the state, and gaining complete control over the political party. Within the stated period, the prosecution claims that there was illegal inflow of 4.900.000 EUR on the party's account. In the presentation of the investigation the prosecution emphasized that they possess material evidence in the shape of 12,000 banking transactions and that they had questioned over 260 witnesses.

At the same time, SPP claimed that there is reasonable suspicion that this was not the only manner in which the political party obtained illegal financing. They indicated that there are reasonable grounds for suspicion that the prime suspect, as the person in charge, enabled the political party of VMRO-DPMNE to obtain services from the legal entity DG Beton HC Skopje, which at the time of the provision of services had already signed contracts for public procurement award, contrary to the legal limitations stipulated by the Law on Financing Political Parties.

The Primary Public Prosecution investigates money laundering through NLB Tutunska Banka

The Primary Public Prosecutor's Office Prosecuting Organized Crime and Corruption informed that they initiated a new case against one former and one current director of NLB Tutunska Banka, a former minister, a lawyer, a notary public and other people, as well as one person – a citizen of the Republic of Slovenia, for committing the crimes of Abuse of Official Position and Authority under Article 353 and Money Laundering under Article 273 from the Criminal Code.

The Prosecution informs that there are suspicions that in the period between 2006 and 2017 company activities were taken towards founding companies, raising loans and transferring funds from Slovenia and in Austrian companies, and then some of those funds were invested in establishing new companies and purchasing real estate in the area of the City of Bitola.

SPP's press release states that they issued orders for analysis of financial transactions and providing all the evidence-related materials of financial, administrative and property nature in order to establish the facts and provide evidence.¹⁵

ONGOING LITIGATION

"Tvrđina 2" - C-1905/16

At the most recent hearing, one of the lawyers for the defense emphasized the fact that SPP had seized the evidence in an unlawful manner and called on Article 197, para 1 from LCP, whereby the defense proposed that the court rejects the declassified evidence. However, the Special Public Prosecution indicated that this proposal was ungrounded, as it was under PP's authority to prosecute criminal acts on the principle of legality and in accordance with Article 287 from LCP, the said evidence was obtained in a lawful manner. Consequently, the proposal of the defense for exemption of the evidence for declassification of the case files as evidence obtained in an unlawful manner, was rejected by the court, and a decision was made that the evidence of the defense was obtained in a lawful manner and would be accepted and taken into consideration by the court. The prosecution

¹⁵ <http://jorm.gov.mk/?p=4048>





also proposed the questioning of witnesses who were not present at the hearing, and given the fact there were no conditions for it to be held, the trial was postponed for 03.05.2017.

„Violence in Parliament”

Some of the defendants for riots in the Parliament of the Republic of Macedonia, who are charged for committing the crime of “Participating in a mob preventing an official from performing official duties”, under Article 384. Para 1 from CC of the RM, were taken to court, and after the content of the indictment was elaborated, and in the presence of their lawyers, they pleaded guilty. The damaged officials/members of MoI and the Assembly security were also invited at the hearing, some of whom also announced compensation claims in separate civil proceedings, while some only joined the criminal prosecution. All nine defendants were sentenced to suspended sentences, whereby the lead defendant, due to already having a file of previous convictions, got a suspended sentence with a duration of 1 year and 6 month, which shall not come into effect unless he commits another crime in the next 5 years, while the remaining 8 defendants got suspended sentences in a duration of 6 months that will not come into effect unless the defendants commit another crime in the next year and a half.

„Divo Naselje” - COC 127/15

The hearings on case COC. No. 127/15, publicly known as Divo naselje, were open to the public in the course of this month.

The last of the 37 defendants was examined at the hearing from the Divo naselje case held on 05.05.2017. His examination took place in accordance with the Law on Criminal Proceedings. At this hearing, in accordance with Article 394 from the LCP, the public prosecutors and the defense submitted a proposal to supplement the record. The court informed those present that the hearing scheduled for 09.05.2017 will not be held, and the procedure will continue on 11.05.2017.

The hearing held on 11.05.2017 on the Divo naselje Case was closed to the public from 9:30 to 11:30 am. Afterwards, the hearing was open to the public and it continued with the submission of proposals by the defense for supplementation of the record in accordance with Article 394 from the LCP and an elaboration by the lawyers of the defense against the additional proof presented by the prosecution. The next hearing was scheduled for 15.05.2017. The next two hearings were postponed, considering the fact that additional time to decide on the evidence was necessary.

Before the start of the main hearing, on 23.05.2017, the attorneys for the defense demanded exemption of the trial chamber, the public prosecutors and the President of the Supreme Court for biased and unprofessional conduct of the procedure, which according to them is apparent due to the rejection of nearly all additionally proposed evidence on the part of the defense. The attorneys of the defense were obviously outraged with the court’s explanation that most of the additionally proposed evidence and witnesses of the defense were not admissible because the defense should have provided them in the preliminary proceedings. After these requests for exemption, the trial chamber withdrew for counseling and set a break during which the judges talked to the prosecutors. After the break finished, the court adjourned the proceedings until the competent authorities decided on the request for exemption.





“Levica” - C-986/16

Considering the fact that there was a halt in the proceedings which lasted more than 90 days, the proceedings had to be restarted. The subject of discussion was the contested proof, according to the defense – the expert opinion about the amount of the damage inflicted, which was assessed by the damaged party, and not on a PP’s order. The judge emphasized that he will state his opinion on the amount of the damage in the course of the proceedings, and that there is probability that he would direct them to a civil dispute. The defense submitted a request for termination of the measures to ensure presence – calling to court. PP agreed and the court adopted a decision for termination, whereby the hearing was postponed for 10.07.2017 at 11 am.

DOV no.08-12/4 – a case before the Judicial Council of the Republic of Macedonia

This case is on the dismissal of the former President of the Court of Appeals in Skopje, Jordan Mitrinovski, who started proceedings before the European Court of Human Rights which established a violation of Article 6 of the ECHR. The hearing was postponed at the request of the lawyers of former judge Mitrinovski, due to his deteriorated health, which was the reason why he did not attend the session. The lawyers asked for a postponement of the hearing for an indefinite period of time.

III. FUNDAMENTAL RIGHTS

Rule of Law

In the course of May, the focus of the Ministry of Interior was the clarification of the events that took place in the Assembly of the Republic of Macedonia on 27th of April, as well as the sanctioning of the possible crimes and their perpetrators. With regards to the events in the Assembly, media interest was also apparent, well expressed through the “Code”¹⁶ show, which covered several aspects of these events, especially in relation to its organizers and their intention, the offenders and the committed crimes, the backgrounds and failures to act on the part of the police. However, despite the efforts of the Ministry of Interior and the local ministry branch in Skopje in taking adequate measures and activities for the purpose of identifying the participants in the events who carried out actions containing elements of crimes, the court sentenced some of the defendants (9) with suspended sentences for the crimes they were charged with – participating in a crowd prevent an official person from performing his/her official duty.

However, the said crime that the court punished with a suspended sentence is not the only crime committed on 27 April, to the contrary, as the Helsinki Committee for Human Rights of the Republic of Macedonia emphasized in its special Report on the Events in the Assembly: “The report contains a total of 28 crimes, 18 of which are already provable with considerable evidence, and 10 suspected crimes. The possible perpetrators are divided into four groups: 1) organizers, 2) perpetrators, 3) police officers and 4) their superiors. The crimes are established as such in 8 chapters of the Criminal Code, and were directed against: 1) the life and body, 2) the freedoms and rights of citizens, 3) property, 4) security, 5) State, 6) office, 7) judiciary and 8) public order. The role of the judicial

¹⁶ <https://www.youtube.com/watch?v=59Q4ehr7Q1E>





authorities is to determine whether and which of the said crimes have been committed or if there was an attempt to commit those crimes as well as to prevent erroneous determination, joint accountability and arbitrary sanctions.”

Finally, despite these events in the Assembly, on 31 May, a plenary session was held in the Assembly where with 62 votes “in favour”, 44 votes “against” and 5 abstaining from voting, the Assembly of the Republic of Macedonia elected the new Government led by the political party SDSM, with Zoran Zaev at its forefront.

Ombudsman

This May saw the raising of the issue of the status of the people called “phantoms” who live on the territory of the Republic of Macedonia without any legal status, i.e. no protection or guarantee that their rights and liberties will be exercised. The Ombudsman, Ixhet Memeti, reminded that apart from some of the Roma in Macedonia whose status is unresolved, there are in addition more than 150 Kosovo refugees who have been living with an unresolved legal status for more than 18 years.

Noting that the lack of political will has been translated into measures that fail to produce effective legal action or measures that violate the rule of law, Mr. Memeti clarified the procedure that leaves these people in dire struggle for survival "The Asylum Department issues a document according to which the person is in the stage of suspended return. Because of its color, this document is called “the yellow card” which postpones these persons’ return to their home country, and at the same time limits their access to and exercise of all their rights in Macedonia, although these are people who should be enjoying international protection. The Ombudsman failed to get a response on what grounds these people receive such a document, when our legal system does not recognize such status. If it is an expression of will, in the least, it should be legalized as such, because in this case the rule of law is in question¹⁷. "Some of these people who are underage, may have their children's rights endangered, because their parents fail to register their birth due to the lack of funds, and the children end up living in poor living conditions. The Ombudsman noted that he reacted on these issues to the Ministry of Labor and Social Policy and the Ministry of Interior, but that there had been no response on their part.¹⁸

Discrimination

The Facebook page of "Shared and Responsible Parenting Even after a Divorce", the majority of members in which are divorced fathers, featured content which discriminates and harasses single mothers, presenting them as "handicapped, tragic and self-absorbed parents, parents who are fighting for "some sort of gender rights," parents who deny the rights to their own children and even parents who have abducted their children, including defamation that they have divorced their husbands only in order to gain financial benefit and be able to pursue new romantic relationships. "Several members of that group, single mothers, reacted to such content because of discrimination

¹⁷ <http://sdk.mk/index.php/glasno-za-ombudsmanot/nad-150-begaltsi-od-kosovo-18-godini-zhiveat-kako-fantomi-vo-makedonija/>

¹⁸ <http://sdk.mk/index.php/glasno-za-ombudsmanot/detsa-fantomi-vo-sudskite-baraki-vo-butel-vlastite-ne-sakaat-da-zboruvaat-za-niv/>





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against them on grounds of sex, marital status and social status. The Network for Protection against Discrimination and the Civil Society Organization Promoting the Rights of Single Parent Families "One can" expressed serious concern over the disturbing campaign of the initiative "Shared and Responsible Parenting Even after a Divorce", especially as such activities on social networks "and such messages only further stimulate the already-pervasive stigmatization and discrimination of one of the most vulnerable groups of women in society - single mothers¹⁹. "As it was announced by the Network and by "One Can", unless the creation and dissemination of such content does not stop, i.e. unless it is removed from the Facebook page of this group, they will initiate proceeding to establishing discrimination before the competent authorities.

¹⁹ <http://mhc.org.mk/announcements/588#.WTa8IGh97IU>



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